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ENVIRONMENTAL PROTECTION
POLICY AND PLANNING/AIR QUALITY MANAGEMENT

NO_x Budget Program

Adopted Amendments:	N.J.A.C. 7:27-31.1 through 31.4, 31.7 through 31.14, 31.16 through 31.18, 31.21; N.J.A.C. 7:27A-3.10
Adopted New Rule:	N.J.A.C. 7:27-31.22
Proposed:	August 2, 1999, at 31 N.J.R. 2100(a)
Adopted:	July 31, 2000, by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed:	July 31, 2000 as R._____ 2000 d_____ with substantive and technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).
Authority:	N.J.S.A. 13:1B-3 and 26:2C-1 et seq.
DEP Docket Number:	15-99-07/701
Proposal Number:	PRN-
Effective Date:	August 21, 2000
Operative Date:	September 29, 2000
Expiration Date:	N.J.A.C. 7:27, Exempt N.J.A.C. 7:27A, November 9, 2004

The Department of Environmental Protection (the Department) is adopting amendments and new rules at N.J.A.C. 7:27-31 entitled "NO_x Budget Program," which prescribes how much oxides of nitrogen (NO_x) may be emitted from certain large, stationary, combustion sources. The NO_x Budget Program also incorporates an interstate trading mechanism. Please refer to the proposal for background information about this program.

Summary of Hearing Officer's Recommendations and Agency Response:

On September 1, 1999, the Department held a public hearing concerning the proposal in the public hearing room at the Department of Environmental Protection, 401 East State Street, Trenton, New Jersey. John Elston, Administrator of the Office of Air Quality Management, served as the Hearing Officer. After reviewing the oral testimony and written comments, Mr. Elston recommended that the Department adopt the proposed rule amendments with the changes described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department has accepted the Hearing Officer's recommendations and adopts herein the proposed amendments, with changes. The Hearing

Officer's recommendations are set forth in the hearing officer's report. A copy of the record of public hearing (includes the hearing officer's report) is available for inspection by contacting:

ATTN: Docket #15-99-07/701
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

This adoption document can be downloaded electronically from the Department's site on the World Wide Web at http://www.state.nj.us/dep/aqm/noxbrvad.htm.

Summary of Public Comments and Agency Responses:

The Department received oral and/or written comments on its proposed amendments from the following persons:

1. Michael Arny, Director; Leonardo Academy
2. Vincent J. Brisini, Environmental Manager Air Quality; GPU Generation, Inc.
3. Mark V. Carney, Vice President of Environmental Affairs; PG&E Generating
4. Mark K. Driscoll, Manager - Environmental; East Coast Power L.L.C.
5. Lisa A. Fleming; Vineland Municipal Electric Utility
6. Nathan E. Hanson, Business Manager; North Jersey Energy Associates, A Limited Partnership
7. James W. Klickovich, Senior Coordinator of Supply Engineering & Support Environmental; Conectiv
8. Russ Like, Gabel and Associates on behalf of Independent Energy Producers of New Jersey
9. Steven C. Riva, Chief of Air Programs Branch Permitting Section; United States Environmental Protection Agency Region II
10. Scott A. Weiner, Senior Vice President; Sithe Energies, Inc.
11. Samuel A. Wolfe, Environmental Policy Manager of Environment, Health and Safety; Public Service Electric and Gas Company

The number in parentheses after each comment below indicate the person(s) who submitted the comment, as specified in the list above. An asterisk within parentheses preceding a response to comment indicates that changes to the rule text are associated with the response. The comments are as follows:

General Comments

1. COMMENT: The commenter applauds the New Jersey Department of Environmental Protection for its leadership in the inclusion of rewards for energy efficiency and renewable energy in the proposed amendments and new rules for the NO_x Budget Program. (1)

   RESPONSE: The Department acknowledges this comment in support of the proposal.

2. COMMENT: The commenter appreciates the challenges posed by Department's attempts to utilize existing complex rule as a basis for meeting New Jersey's various obligations with regard to the

post-2002 Nitrogen Oxides (NO_x) Budget Program. However, due to the complexity of the program and significance of the changes, the commenter believes a collaborative approach to modifying these rules is warranted. At a minimum the rules are difficult to understand and the Department should provide an opportunity to the regulated community to engage in a discussion of the Department's intentions while the opportunity to modify the rules remains open. (3)

RESPONSE: The Department believes in an open rulemaking process. The Department considered an interested party review of the proposed changes before formally proposing them. However, the purpose of the rule was primarily to make minimal changes to the rule in order to align the rule with the United State's Environmental Protection Agency's (USEPA's) NO_x SIP Call. The Department decided not to reconvene a working group for this rulemaking because of the limited scope of the rule. The Department recognizes the complexity of the regulatory language and welcomes any suggestions to simplify the rule for the Department's consideration.

3. COMMENT: Given the importance of the NO_x Budget rule as a factor affecting the economics of the electric industry in New Jersey now and in the future, the commenter strongly endorses the adoption of NO_x Budget rules that will significantly reduce NO_x emissions from electric generating units in New Jersey, that rely on market-based mechanisms to accomplish this goal, and that treat fairly all generators competing with one another in competitive generating markets. (10)

RESPONSE: The Department acknowledges this comment.

4. COMMENT: The commenter opposes the Department's proposed revisions to the SIP for the following reasons; (1) because they are not required at this time in light of recent Federal Court decisions staying implementation of the Federal Clean Act; and (2) complying with the terms of a MOU that other states may choose to ignore in light of the uncertainty surrounding the federal law; and (3) place in-state businesses and consumers at a competitive disadvantage with those in other states; and (4) will result in increased costs to consumers and severely jeopardize system reliability at a time when capacity and demand are perilously close.

Consistent regulations should be required in each of the OTC states before implementing the program in New Jersey. The OTC NO_x Model Rule discusses the importance of consistency between regulations developed in the OTC as a key to the success of the program. New Jersey should ensure that they do not put themselves at a competitive disadvantage by adopting legislation inconsistent with other states within the OTC. (6)

RESPONSE: The Department, along with the other Ozone Transport Commission States are committed to submitting NO_x SIP Call response to the USEPA despite the court's lifting of the mandatory schedule. On March 3, 2000, the U.S. Court of Appeals for the District of Columbia issued a decision largely upholding the NO_x SIP Call (State of Michigan, et al. v. USEPA (No. 98-1497)). In early April, the USEPA filed a motion with the Court to lift the stay on the deadline for States to submit SIP Calls to the USEPA. If the USEPA motion is granted, the NO_x SIP Call plans will be due by September 1, 2000. The Department's NO_x Budget Rules also fulfill New Jersey's commitment under the OTC NO_x Budget MOU, which requires NO_x reductions from budget sources the ozone season of 2003 and subsequent ozone seasons. The amendments adopted herein do not change the budget amounts for New Jersey and do not add any burdens upon New Jersey sources subject to the program that are not also placed upon sources in other states participating in the

program. According to information from PJM, there is more than adequate buffer between capacity and demand in the near future.

The Department is adopting these amendments so that greater consistency with other states is achieved. These amendments alter the allocation timing and the monitoring requirements so that they will be aligned with those being implemented in other OTC states and to be implemented by other states that join the Cap and Trade Program for the years 2003 and beyond.

5. COMMENT: The commenter supports Department's promulgation of regulations in a timely manner to fulfill New Jersey's obligations with regard to the post-2002 NO_x Budget Program. However, the Department's actions should be in concert with the actions of all 22 states in the NO_x SIP Call region. Action by New Jersey and the other Ozone Transport Commission states, without participation by the other states in the 22-state SIP Call region, will not solve the Northeast's NO_x problem. In light of the recent stay ordered by the Federal Appeals Court (State of Michigan et al. v. EPA, No. 98-1497), a revision of the NO_x Budget Rule at this time amounts to a voluntary action by the Department. A more prudent course would be for the Department to avail itself of the time provided by the stay to refine its proposed regulation to address several outstanding issues. (8)

The commenter supports the Department's promulgation of regulations in a timely manner to fulfill New Jersey's various obligations with regard to the post-2002 Nitrogen Oxides (NO_x) Budget Program. However, the Department's actions should be in concert with the actions of all 22 states in the NO_x SIP Call region. Unilateral action by New Jersey to reduce NO_x emissions will not result in the comparability between states necessary for market-based compliance to solve the State's NO_x problem. Moreover, the Department has provided no rationale for taking this action at this time. Revising the State Implementation Plan is a voluntary action by the Department because of the recent stay ordered by the Federal Appeals Court (State of Michigan et al. v. EPA, No. 98-1497). Since the Department's proposal has critical issues that require resolution (see comments below) a more prudent course would be for the Department to avail itself of the time provided by the stay to refine its proposed regulation to address these outstanding issues. (3)

RESPONSE: The Department's action is not voluntary. The comments address a court decision that merely temporarily stayed the required SIP Submittal due date of September 15, 1999, until the Court was prepared to complete its review of the NOx SIP Call. Recently, the court has upheld the SIP Call. New Jersey, along with other States within the Ozone Transport Commission have recognized the importance of the NO_x SIP Call to achieve air quality standards throughout the region and have committed to implement the NO_x SIP Call requirements. Additionally, the previously adopted rule and the amended rule adopted herein serve to implement the OTC NO_x Budget MOU which remains in effect regardless of the status of USEPA's NO_x SIP Call. The Department is convinced that this program will be implemented widely throughout the 22 states region.

Federal Standards Analysis

6. COMMENT: In proposing these amendments to the existing NO_x Budget program in New Jersey, the Department has described them as "minor changes to the current rules" which are "predominantly administrative in nature." As such, the Department has determined that the "proposed amendments and new rule do not exceed the requirements imposed by Federal law," and no analysis has been conducted with regard to whether any additional economic burden has been placed on the regulated community in New Jersey due to discrepancies with federal regulations and,

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additionally, what the cost and effect of any such burden might be. Exception is taken to this evaluation.

The primary purpose of the proposed changes is, as noted by the Department, to bring the New Jersey program in line with the federal NO_x Budget plan. Regarding the timing of the 2003 and later year allocations, the administrative changes proposed do appear to be necessary and are congruent with federal regulation. The amount of allowances being distributed to budget sources in the 2003 allocation process, however, which is embodied in the amended portion of the rule, is significantly less than what is allowed under federal requirements, potentially creating a much greater regulatory burden for New Jersey sources compared with sources in other states which are part of the federal program. In addition, the allocation process for future years is such that the amount of the allowance pool will almost assuredly decline over time, making this situation even worse. It would seem that this departure from the federal mandates is something which is not minor and is something for which the Department needs to provide an accounting.

When the original NO_x Budget rule was proposed in 1997, there were numerous and extensive comments on the Phase III allocation system. Since the 2003 allocation had not been part of the stakeholder discussions held prior to the rule proposal, participants in that process were surprised by its structure, especially the size of the allowance pool, which was less than that set forth in the OTC MOU, and the fact that trading within the New Jersey component was all but eliminated through the Department's withholding of any allowances which might cover operation at emission rates above 0.15 pounds per million British Thermal Units (lb/MMBtu). (Except as sources might be able to siphon allowances from other states to compensate or continually reduce operation, New Jersey effectively proposed a 0.15 lb/MMBtu emission rate cap within the state by putting in the attainment reserve all allowances leftover after the initial rate-based allocation was made.)

Upon adoption of the original rule, the Department deflected most of the comments regarding the size of the 2003 allowance pool, explaining that the OTC states had agreed to allocate, for 2003, the lesser of the Phase III default contained in the MOU (the 13,022 tons noted in section 31.3) or the amount designated in the SIP Call. Since, at the time, the latter amount was proposed to be approximately 8,200 tons, the originally adopted rule was in line with this agreement and the expected federal standards. Commenters cautioned, however, that the SIP Call was not final and urged the Department to reserve sections pertaining to the 2003 allocation process until it was so. The Department moved forward with the rule promulgation, but did state in the response to Comment 86 that it "reserves the need to revisit the size of the Phase III budget until after the EPA SIP Call Budget has been finalized." Despite significant changes at the federal level, changes which would increase the size of the budget available to New Jersey sources, the Department has not reviewed its position in this matter.

With regard to the trading issue and whether any amount of the budget, whatever the size, should be placed in the attainment reserve, the Department sounded much more receptive to comments made in adopting the original rule. In its response to Comment 104 (see 30 N.J.R. 2686, 7/20/1998), the Department stated that it "agrees that the Phase III allocation system should allocate all of the 8,200 allowances… and should not withhold any of these allowances in the 'attainment reserve.' For this reason the Department is considering amendment of the Phase III allocation provisions in order to allocate all of the 8,200 allowances." Again, despite an apparent commitment to the principles involved, no change has been made to effect the intent shown.

With the de-regulation of the electric power industry already set in motion, any regulatory program which puts New Jersey business at an economic disadvantage relative to business in other states must

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be looked at carefully. As proposed, the New Jersey NO_x Budget is such a program. Given that EPA's regional NO_x Budget plan allows for so much more flexibility, it is hard to understand why the Department chooses not to participate within its full bounds.

It is hoped that the Department will reconsider this proposal and amend the rule more extensively than it has proposed with regard to its previously stated intentions and bringing the rule in line with the federal program in all respects, not just the allocation timing. If no further changes are to be made to the present proposal prior to adoption, however, then the Department should explain why it is choosing not to exercise its full options under the federal program and increase the 2003 budget, and why it has reversed its decision to provide full allocation of all budget amounts within New Jersey, which would be in line with EPA trading principles.

It is the commenter's opinion that this explanation is owed not only to follow through with the rule process started with the original rule adoption, but is actually mandated by New Jersey law. N.J.S.A. 52:14B-23 requires that each time the Department "adopts, readopts, or amends any rule or regulation" with which a federal standard is associated, an analysis comparing the state and federal requirements must be prepared. Given the connection of this rule with the federal NO_x Budget program, this requirement should be completely applicable in this case. (Note that it is upon both the "initial publication and all subsequent publications" of any subject rule or regulation, prompted by adoption, readoption, or amendment, that a statement or analysis must be made in reference to whether "the rule or regulation in question" contains standards which exceed those in federal law. It is not merely the amendments being proposed which must be evaluated. In this case, however, the size of the budget is integral to the part of the rule being published as amended, and so must be addressed in any case.)(5)

In an effort to avoid regulation that dulls the State's competitive advantage while remaining vigilant in the protection of the public's health, safety and welfare, Governor Whitman has made it clear that State agencies should analyze whether federal standards sufficiently protect the health, safety and welfare of the State's citizens. See Executive Order 27 (1994). The Legislature has echoed that policy, directing State agencies to consider applicable federal standards when amending regulations with analogous federal counterparts and determining whether those federal standards sufficiently protect the health, safety and welfare of New Jersey's citizens. N.J.A.C. 52:14B-22.

These policies were not relevant when the Department adopted the existing NO_x Budget rules. At that time, there was no analogous federal counterpart in place. After the Department adopted those rules, however, the United States Environmental Protection Agency (USEPA) established such a counterpart. That counterpart, the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," is commonly known as the "NO_x SIP Call." 63 F.R. 57355, October 27, 1998.

Two essential features of New Jersey's NO_x Budget rules are more stringent than their analogous federal counterpart: the establishment of the base emission budget of 13,022 tons of NO_x for the years 2003 and thereafter; and the annual allocation of 4,822 tons of that budget to the Department's attainment reserve account, which essentially establishes a budget of 8,200 tons available to participants in the NO_x Budget program. The Department has previously stated that the transfer of allowances to the attainment reserve will reduce the budget to a size equivalent to applying a 90 percent reduction to the 1990 baseline inventory. 30 N.J.R. 2665, July 20, 1998, Response to Comment 30.

These features of New Jersey's program have never undergone the scrutiny contemplated by Governor Whitman when she signed Executive Order 27 and the Administrative Procedure Act amendments codified at N.J.A.C. 52:14B-22. Neither have these features been the subject of the detailed federal standards analysis described in N.J.A.C. 1:30-3.1(f)5. At this time, the commenter is not attempting to make a legal argument that the Department is required to have made this analysis. However, it would certainly be good public policy, and would also be consistent with the spirit of the Executive Order and the related laws and regulations, if the Department shared with the public its basis for concluding that the federal standards and requirements established in the NO_x SIP Call are somehow inappropriate for New Jersey. The USEPA has exhaustively documented its basis for arriving at the emission budgets it established in the NO_x SIP Call; the public would be better informed if the Department explained its basis for concluding that the budget which the USEPA established for New Jersey is too lax. (11)

RESPONSE: In this rulemaking, the Department did not amend the 2003 NO_x budget figure of 8,200 allowances and addressed this figure in the federal standards analysis of the previous rulemaking that established this budget value. During this previous rulemaking, there was no comparable federal regulation. Additionally, the Department responded to comments about the 8,200 ton budget level in previous adoption of the NOx Budget Program rules (see the responses to comments #3 at 30 N.J.R. 2662; #27 at 30 N.J.R. 2665; #30 at 30 N.J.R. 2665; and #81 at 30 N.J.R. 2679).

Under the provisions of the NOx SIP Call, States have some flexibility regarding the size of each sector's budget to comply with the Statewide NOx Budget Cap. One of the requirements is that the Cap and Trade portion of the statewide budget must be less than or equal to what USEPA has determined for this sector. The 8,200 ton budget in the Department's rules satisfies this federal requirement. The Department has relied on this budget amount in several SIP submissions to EPA, including the submission to EPA which provides New Jersey's plan on how it plans to meet the NOx SIP Call. Therefore, even though the Department did not revise the budget figure within this rulemaking, this figure is consistent with federal standards, specifically, USEPA's NOx SIP Call requirements.

N.J.A.C. 7:27-31.2 Definitions

7. COMMENT: At N.J.A.C. 7:27-31.14(h), the rule does not use the phrase "alternative monitoring system" rather, it uses "alternative monitoring method." The commenter suggests changing the term here to avoid any unnecessary confusion. (9)

(*) RESPONSE: The Department agrees with this comment and has amended N.J.A.C. 7:27-31.14(h) accordingly.

8. COMMENT: "Authorized Account Representative" - The AAR's function goes beyond what is defined in the Department's rule. The Department should add, after the words "submit reports" in the second sentence, the words "and other submissions under N.J.A.C. 7-27-31.1 through 7:27-31.19." Additionally, the definition should clarify that each facility needs to have one and only one AAR and may have up to one alternate AAR. (9)

(*) RESPONSE: The Department has amended this definition upon adoption to clarify the functions of the AAR as specified in the rule as suggested in this comment and in accordance with the definition

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of "NO_x Authorized Account Representative" at 40 CFR 96.2. The concept of designating a single AAR and up to one alternative AAR is expressed at N.J.A.C. 7:27-31.13(g).

9. COMMENT: In the definition of "Base budget" or "Base emission budget," the emissions budget New Jersey has to meet under the SIP Call NO_x Budget Trading Program differs from the emissions budget under the OTC MOU. The Department should amend the rule to refer to the NO_x SIP Call Budget for each control period after and including 2003. (9)

(*) RESPONSE: The Department has added reference to the SIP Call Budget in the definition. The Department has also removed the reference to the Ozone Transport Region (OTR) and replaced it with a more general reference of other states participating in the NO_x Budget Cap and Trade Program. The Department has clarified these references because of the Federal origin of the expanded scope of the NO_x Budget Program starting in the year 2003. With respect to the commenter's point that the budget as prescribed by the OTC MOU is different than the budget prescribed by the SIP Call, the Department has made adequate provision for this difference in that it is depositing a number of allowances into the attainment reserve (generally to be retired) so that there are only 8,200 allowances left for allocation. This number of allowances is different from both the OTC MOU calculated value of 13,022 allowances and the uncertain value as calculated by EPA under the SIP Call (See N.J.A.C. 7:27-31.7(d)). It is expected that the final SIP Call value will not be less than 8,200 allowances. The Department also proposed rule language at N.J.A.C. 7:27-31.3(b)2, which is adopted herein, that prevents the base budget from starting at a value greater than what EPA would call for in the Cap and Trade Program under the NO_x SIP Call. Therefore, the Department believes that it has adequately addressed EPA's NO_x SIP Call Cap and trade Budget value for New Jersey within this rule.

10. COMMENT: The commenter is concerned that the terms "Baseline source" and "Budget source" will cause confusion because they are not consistent with the terms used in both 40 CFR 75 and 40 CFR part 96. These rules use "unit" and "source" – where unit is a single "fossil fuel fired stationary boiler, combustion turbine, or combined cycle system" and "source" encompasses all units located at the same site. As a solution, the commenter suggests adding language to 7:27-31.14 Emissions Monitoring stating that these terms are analogous to the relevant terms in 40 CFR part 75. Please see comments on N.J.A.C. 7:27-31.14 Emissions Monitoring.

In addition, the definitions of these terms are too broad in that they include all types of indirect heat exchangers. "Baseline source" and "budget source" should be limited to sources that emit only through a stack. Units with fugitive emissions cannot be monitored under 40 CFR Part 75 and therefore cannot be included in the NO_x Budget Trading Program. Further, since only sources in New Jersey are governed by this rule, the reference to sources "in the OTR" should be removed.

Finally, both definitions should refer to "boilers or other indirect heat exchangers" and the term "rated output" should be defined. (9)

RESPONSE: The Department is aware of the difference in terminology in what EPA defines as "unit and source" and in what the Department describes as "source and facility." The origins of the use of different terminology to describe the same concepts are from the differences in legislation. Similar differences exist in the terminology used in the Department's Operating Permit rules (N.J.A.C. 7:27-22) and EPA's regulations at 40 CFR Part 70. Basically, what EPA defines as "source" and what the Department defines as "facility" are the same, and what EPA defines as "unit" and what the Department defines as "source" or "source operation" are the same. The wording in

the definitions is consistent. The Department has addressed the suggested language in response to comment #90.

Regarding the suggestion to add language regarding the venting of emissions through a stack, the Department is not changing the definitions. The regulatory language at 40 CFR Part 96 does not contain this language in any of the definitions or in the applicability section.

(*) The Department is removing the extraneous reference to "located in the OTC" upon adoption in the definition of "budget source." The Department is also adding the word "other" as suggested in the definition of "baseline source," because a boiler is a type of an indirect heat exchanger.

11. COMMENT: In the definition of "Electric generating unit," the sentence, "This term does not include a waste-to-electricity unit" is confusing and seems unnecessary. The concept of a "waste-to-electricity unit" seems to be covered by the limitation to "fossil fuel fired" units. If the Department's intention is to exclude these units regardless of whether they are fossil-fuel fired, this needs to be stated more clearly. The Department should either remove the sentence or define "waste-to-electricity" unit. The Department should also define "combustion unit." In addition, the Department should indicate whether an electric generating unit that stops producing electricity and produces steam remains an electric generating unit. (9)

(*) RESPONSE: The purpose of the sentence, "This term does not include a waste-to-electricity unit," is to avoid confusion. Specifically, the sentence is intended to advise the reader that waste to electricity units are generally not subject to the requirements of this subchapter because waste to energy facilities generally do not use at least 51% of their fuel from fossil derived fuels. However, the commenter is correct in that the sentence is unnecessary because the definition of "fossil fuel fired" essentially excludes waste to energy sources that do not use more than 50% of their fuel from fossil derived fuels. Therefore, the department is removing the sentence as suggested by the commenter upon adoption.

The term "combustion unit" is used in three locations in the subchapter: In the definition of electric generating unit, at N.J.A.C. 7:27-31.12(c)1, and at N.J.A.C. 7:27-31.16(a)2i. The Department is adding a definition of combustion unit modeled after the definition of the term "combustion source" at N.J.A.C. 7:27-19.

Regarding the commenter's request for clarification about a whether an electric generating unit remains such if it stops producing electricity, the Department is providing clarification in this response and not in the rule language. In such a case, it would not be an electric generating unit. It would continue to be a budget source if it is a boiler or other indirect heat exchanger with rated heat input capacity of 250 MMBtu per hour. Additionally, the definition of "electric generating unit" is used solely for applicability purposes and not for allowance allocation purposes. Unlike the EPA model rule for allocation, the Department does not allocate allowances out of two pools (one electric generating pool and a non-electric generating pool). Therefore, there would be no change in how the source would be allocated allowances if a budget source discontinued its ability to provide energy for a generator. Further, for clarification purposes, the source would need to be permanently disconnected to any generator with a rated nameplate capacity of 15 Megawatts (MW) or greater in order for it to not be considered an electric generator, rather than just solely producing steam for non-electricity generating purposes.

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12. COMMENT: Regarding the definitions of "Electric generating unit" and "industrial boiler," the commenter is concerned about the overlap of these definitions. The Department defines an electric generating unit as a "...combustion unit... which provides electricity for sale or use." It then defines an industrial boiler as a boiler that does not provide steam used to produce electricity and does not produce steam for a steam distribution system used to produce electricity for internal use. Therefore a boiler which produces steam used to produce electricity could be both an industrial boiler and an EGU. In addition, if a boiler produces only steam some of which is provided to a steam distribution system for electricity production, the boiler seems to be neither an electric generating unit nor an industrial boiler (nor a process heater). These categorizations may affect allocations. (9)

RESPONSE: Although it is possible that both these definitions could describe the same source, the use of both terms does not pose any conflict in the rule language. The term "Electric generating unit" is used solely for applicability purposes and the term "industrial boiler" is used solely for allowance allocation purposes. Therefore, if a boiler serves a generator having a nameplate capacity of 15 MW or greater and the electricity is used exclusively within the plant and is not sold or supplied to a power distribution system, then it would be both an "electric generating unit" (making it a "budget source") and an "industrial boiler" (making it subject to different allowance allocation provisions and non-industrial boilers). Likewise, it is possible for a budget source to be neither an electric generating unit nor an industrial boiler (for example, a boiler in which steam is produced and sold). In either of the two cases mentioned, there are no allowance allocation conflicts.

13. COMMENT: In the definition of the term "Excess emissions," the Department oversimplifies the concept of excess emissions in this definition and elsewhere. Not all allowances in a unit's account may be available for compliance purposes. Allowances in the account may be allocated for future years, limited due to the flow control mechanisms (in 7:27-31.17(g)(2)), or needed for deductions for underutilized opt-in sources (in 7:27-31.17(g)(3)) and therefore not available for reconciliation. the Department's rule needs to refer to allowances that are available for use for that control period. (9)

(*) RESPONSE: The commenter is correct in that only certain allowances are valid for use in a particular control period as fully described at N.J.A.C. 7:27-17. However, upon further review of the rule language, the term "excess emissions" is not used in the text of N.J.A.C. 7:27-31. Therefore, the Department is removing the definition of this term upon adoption.

14. COMMENT: "Fossil fuel fired" - This definition should read "greater than 50 percent" rather than "at least 51 percent." As defined in 40 CFR Part 51.121 a unit which burns 50.1 percent fossil fuel is fossil fuel fired. (9)

(*) RESPONSE: The Department is amending this definition upon adoption in order to achieve an exact consistency of definitions rather than an approximate consistency with regard to the percent of fossil fuel threshold.

15. COMMENT: The current rule defines a "new budget source" to be one that meets three criteria: "1. Is not an opt-in source, 2. Has been permitted to operate, and 3. Has not operated for two full May 1 through September 30 periods." The Department has proposed to amend the definition of "new budget source" at N.J.A.C. 7:27-31.2. The first two criteria remain unchanged however, the third criteria is proposed to be dependent upon calendar year. "For each of the years 1999 through

2000, [a source that] has not operated for two full" control periods is a "new budget source." "For each of the years 2003 and thereafter, [a source that] has not commenced operation in order to be allocated allowances pursuant to N.J.A.C. 7:27-31.7(l) or (d)3 through 4."

The Mantua Creek Project is scheduled to begin construction in early 2000 and is expected to become operational in late 2001 or early 2002 (prior to May 1). The commenter wishes to confirm that the Department will allocate sufficient NO_x allowances to Mantua Creek for operation. Based upon our review of the proposed regulation, Mantua Creek will receive an allocation from the New Source/Growth Reserve at the end of the 2002 control period calculated in accordance with the provision at N.J.A.C. 7:27-31.7(c) sufficient to cover the actual operation of the facility during the 2002 control period.

In 2003, Mantua Creek will have commenced operation in a prior year but is not included on the allocation table at N.J.A.C. 7:27-31.7(l). In order to be allocated allowances pursuant to N.J.A.C. 7:27-31.7(d)3 through 4, a source must have operating data from three prior control periods. Therefore, it is the commenter's interpretation that Mantua Creek will be considered a "new budget source" until operation has commenced for three control periods. In other words, if Mantua Creek initiates operation in 2002 as planned, it will be considered a "new budget source" for the 2002, 2003 and 2004 control periods and receive an allocation from the New Source/Growth Reserve at the end of each of these control periods. The allocation for Mantua Creek in 2005 and beyond will be determined in accordance with the equations in N.J.A.C. 7:27-31.7(d)3 through 4.

The commenter supports the Department's proposed rulemaking to the extent that these interpretations are correct. However, we believe the proposed changes are confusing and our interpretation is essentially the same as under the existing rules; i.e., as if these changes were not proposed. The proposed rule establishes a means for a new low NO_x emitting project to enter the market by allowing the project to establish an operating history before losing the status of "new budget source." However, if this interpretation is incorrect, the commenter strongly urges the Department to redraft the rules to accommodate Mantua Creek and similar projects. The Department should want to encourage the development of cleaner, more efficient generating capacity, which will ultimately displace the older, high NO_x emitting facilities. (3)

RESPONSE: The commenter is correct in that the proposed change to the definition of "new budget source" preserves the policy that new sources (that are low NO_x emitting sources) will draw allowances from the New Source/Growth Reserve until there is enough operational data to allocate allowances based on this data. The proposed changes are necessary because of the change in the timing of allowance allocation between the 1999-2002 phase and the 2003 phase of the program. The following example clarifies how a new source would be allocated base on the definition of "new budget source." In the case where a budget source commences operation in the year 2002 (on or before May 1), the source would receive allowances from the New Source Reserve by December 1 of 2002; would receive allowances from the New Source/Growth Reserve before the allowance transfer deadline of 2003, 2004, 2005, 2006; and would receive allowances by April 1, 2004, for the 2006 control period, based on its operation during the 2002 and 2003 control periods. If the source was a low-NO_x emitting source (i.e. less than 0.15 lb/MMBtu), then it could also receive allowances from the New Source/Growth reserve for 2007 (or later year) if the allowances it received for the 2007 control period (or later year) were less than its emissions during the 2007 control period (or later year). During the phase of the program beginning in 2003, because allowances are allocated three years in advance based on at least two full control periods of operation, a "new budget source" would be fully dependent on the new source aspect of the New Source/Growth reserve for five control periods.

16. COMMENT: "New Jersey emissions budget" - Only 2000, 2001, or 2002 vintage OTC allowances can be used for early reduction credits in the NO_x Budget Trading Program. The definition should reflect this. (9)

RESPONSE: The Department is responding to this comment by changing the text of N.J.A.C. 7:27-31.22 rather than the text of this definition. Please see response to comment #111 to further details.

17. COMMENT: "Opt-in source" - The third sentence should be removed since the rule only covers New Jersey sources. If the sentence is retained, it should refer to sources approved pursuant to opt-in provisions approved by the Administrator under the NO_x Budget Trading Program. The reference to "equivalent requirements" suggests that Administrator approval is not sufficient or necessary. (9)

(*) RESPONSE: The Department is removing the third sentence upon adoption as well as portions of the second sentence. Although an opt-in source may exist in another state as approved through the other state's rules, the term as used in this subchapter is only referring to opt-in sources that are located in New Jersey and approved through N.J.A.C. 7:27-31.4. Therefore, the language in the definition referring to opt-in sources in other jurisdictions is ineffective and unnecessary. Likewise, the Department is removing the implicit condition about opt-in sources located in New Jersey contained in the second sentence and is combining it with the first sentence.

18. COMMENT: The definition of "owner or operator" uses the term "owner." The commenter suggests that the Department consult 40 CFR 96.2 for appropriate language for defining "owner." (9)

(*) RESPONSE: The Department has added a definition of the term "owner" that is consistent with the definition used at 40 CFR 96.2

19. COMMENT: New Jersey should review the following definitions from 40 CFR Part 96: Acid Rain emissions limitation, Administrator, Alternate authorized account representative, commence commercial operation, commence operation, common stack, compliance certification, emissions, generator, maximum potential hourly heat input, maximum potential NO_x emission rate, NO_x Budget source, NO_x Budget unit, operating, owner, process heater, receive or receipt, reference method, source, submit or serve, unit, unit load, unit operating day, unit operating hour or hour of unit operation. New Jersey should include them if they are used in Subchapter 31, clarify how some other provision in Subchapter 31 addresses the term, or clarify if the definition is defined in some other State rule. (9)

RESPONSE: The Department has reviewed the definitions cited in the comment and is addressing these terms as follows:

(*) "Acid Rain emissions limitation" -- This term is used in the new provisions of N.J.A.C. 7:27-31.14, Emissions Monitoring. The basic use of this term is to distinguish certain procedures for budget sources that are subject to the Acid Rain Program. The Department is adding a definition of this term that is entirely consistent with the definition as set forth at 40 CFR 96.

(*) "Administrator" -- For clarity, the Department uses the term "USEPA" rather than "Administrator" in the subchapter. The Department also uses two separate terms "NATS Administrator" and "NETS Administrator" where it refers to the operator of the NO_x Budget tracking systems (which is currently the USEPA Clean Air Markets Division, formerly the Acid Rain Division). However, the Department uses the term "Administrator" once at N.J.A.C. 7:27-31.13(h)3ii in the quotation of the certification language to be used by the AAR. Therefore, the Department is defining the term "Administrator" for this single use of the term in the subchapter.

"Alternate authorized account representative" – The rules at 40 CFR 96 do not define this term. The definition of "authorized account representative" and the text of the subchapter (especially N.J.A.C. 7:27-31.13) adequately define this term and what is required of or allowed from the alternate authorized account representative.

(*) "Commence commercial operation" -- The rules at 40 CFR 96.70 use this term four times. The first instance in the federal rules is at 40 CFR 96.4(b)(3) concerning exempting oil or gas fired units that have the potential to emit 25 tons of NO_x or less per control period. The Department does not have similar provisions. The second instance of the use of this term is at 40 CFR 96.5(c)(6)(ii) regarding retired unit exemptions. The Department has similar provisions at N.J.A.C. 7:27-31.16(e), but does not use the term "commence commercial operation." The last two instances of the use of this term in the federal rules are at 40 CFR 96.70(b)(3)(ii)(B) and (b)(4)(i)(B) regarding when a new budget source must first submit its quarterly electronic data reports. The Department proposed similar provisions at N.J.A.C. 7:27-31.14(k)2-3. The Department is adding a definition of "commence commercial operation" upon adoption that is similar to the one used at 40 CFR 96 to clarify exactly what is meant by this term.

(*) "Commence operation" -- The rules at 40 CFR 96 and at N.J.A.C. 7:27-31 use this term many times. The Department is adding a definition of "commence operation" upon adoption that is similar to the one used at 40 CFR 96 to clarify exactly what is meant by this term.

(*) "Common stack" -- The Department uses this term several times in the new provisions at N.J.A.C. 7:27-31.15 and 31.17. The Department is adding a definition of "common stack" upon adoption that is similar to the one used at 40 CFR 96 to clarify exactly what is meant by this term.

"Compliance certification" -- The definition at 40 CFR 96 merely references the submission under the compliance certification subpart at 40 CFR 96 Subpart D. The rules at N.J.A.C. 7:27-31.18 entitled "compliance certification" contain enough explanation of what a compliance certification is without the need of a definition.

"Emissions" -- This term is used throughout the rules at 40 CFR 96 and N.J.A.C. 7:27-31. The Department believes this term is generally understood without the need for a definition. The provisions of the rule fully explain which emissions are of concern, and how they are to be measured, recorded and reported.

"Generator" -- Rather than using the term "generator" and defining it simply as a device that produces electricity, the Department is using the term "electric generator," which does not need definition.

(*) "Maximum potential hourly heat input" and "maximum potential NO_x emission rate" -- Both the USEPA model regulation and the Department's proposed NO_x Budget Program rules use these term once (40 CFR 96.71(b)3(v)(A)(1) and N.J.A.C. 7:27-31.14(o)3v(1)(A) respectively). These

provisions refer to the case when the monitors lose certification status. These provisions require the reporting of potential emissions in the electronic data report during each hour of operation until the monitors are properly certified. The Department is adding definitions of these terms, modeled from the definitions at 40 CFR 96.

(*) "NO_x Budget source"-- The Department uses the equivalent term "facility" in this subchapter when it refers to a plant that includes one or more units or sources subject to the NO_x Budget Program. Current N.J.A.C. 7:27-31.2 does not define the term "facility." So, the Department has inserted a definition of this term upon adoption as it currently exists at N.J.A.C. 7:27-30 and other subchapters within the Air Pollution Control Code. The Department is also inserting a definition of the term "person" upon adoption as its currently exists at N.J.A.C. 7:27-30 and other subchapters within the Air Pollution Control Code because the term "person" is used in the definition of "facility."

"NO_x Budget unit" -- The Department uses the equivalent term "budget source" in this subchapter when it refers to a "unit" that is subject to the NO_x Budget Program. This term is properly defined.

"Operating" -- The USEPA defines this term only in reference to certain provisions regarding opt-in sources. The Department does not use this term in such a context and uses the term generally within the subchapter.

(*) "Owner" -- As indicated in response to comment #18, the Department has inserted a definition of "owner" as modeled after the USEPA definition at 40 CFR 96.

"Process heater" -- 40 CFR 96 does not define this term.

"Receive or receipt of" -- The Department is using this term generally without need for a definition other than the common definition of the term.

"Reference method" – This term does not seem to be used within 40 CFR 96 or N.J.A.C. 7:27-31. The term "alternative reference method" is used once at 40 CFR 96.70(d)1 and N.J.A.C. 7:27-31.14(m)1. The Department does not believe this term needs to be defined as narrowly as it is at 40 CFR 96.

(*) "Source" -- The Department uses the equivalent term "facility." Current N.J.A.C. 7:27-31.2 does not define the term "facility." Therefore, the Department has inserted a definition of this term upon adoption as it currently exists at N.J.A.C. 7:27-30 and other subchapters within the Air Pollution Control Code. The Department is also inserting a definition of the term "person" upon adoption as its currently exists at N.J.A.C. 7:27-30 and other subchapters within the Air Pollution Control Code because the term "person" is used in the definition of "facility."

"Submit or serve"-- The Department uses the equivalent term "submitted" that is defined properly.

"Unit" -- The Department uses the equivalent term "source operation" or "source" and properly modifies this term within the text of the subchapter.

"Unit load" -- Even though this term is defined at 40 CFR 96, this term is not used in either 40 CFR 96 or N.J.A.C. 7:27-31.

(*) "Unit operating day" -- The Department uses this term once at N.J.A.C. 7:27-31.14(o)3v(C) and the USEPA model rule uses it once at 40 CFR 96.71(b)(3)(v)(C). These provisions both state, that when

a budget source loses certification status, certification procedures must be performed within 30 unit operating days after notice of disapproval. For clarification purposes, the Department is adding a definition of "unit operating day" upon adoption modeled after the definition at 40 CFR 96. The Department is also correcting N.J.A.C. 7:27-31.14(o)3v(C) upon adoption to use the term "unit operating day" instead of "source operating day," which was inadvertently proposed because the Department universally changed the term "unit" to "source" when it altered the model language of 40 CFR 96 for the proposal.

(*) "Unit operating hour or hour of unit operation" – The Department uses this term once at N.J.A.C. 7:27-31.14(o)3v(A) and the USEPA model rule uses it once at 40 CFR 96.71(b)(3)(v)(A). These provisions both state the data substitution requirements for the case when a budget source loses certification status. For clarification purposes, the Department is adding a definition of "unit operating hour" upon adoption modeled after the definition at 40 CFR 96. The Department is only defining the term "unit operating hour" and not "hour of unit operation," especially since the term is used once. The Department is also correcting N.J.A.C. 7:27-31.14(o)3v(C) upon adoption to use the term "unit operating hour" instead of "hour of source operation," which was inadvertently proposed because the Department universally changed the term "unit" to "source" when it altered the model language of 40 CFR 96 for the proposal.

N.J.A.C. 7:27-31.3 Applicability and general provisions

20. COMMENT: Many of the requirements and responsibilities outlined in this section for the owner and operator also apply to the AAR and alternate AAR. The Department should add, after the words "owner or operator," the words "and the authorized account representative, where applicable." (9)

RESPONSE: The provisions at N.J.A.C. 7:27-31.3 are general requirements that refer to more detailed provisions of the rule. To the extent that responsibilities of the owner and operator would entail action upon the part of an authorized account representative, such responsibilities of the owner and operator would naturally fall upon the authorized account representative if one has been established by the owner or operator. Therefore, the Department believes that amending this section is not necessary.

21. COMMENT: In the proposed amendments the "(a) - (h) - (No change)" should be changed to "(c) - (h) - (No change)" because there are changes to (b). (9)

RESPONSE: The Office of Administrative Law corrected this typographical error upon publication of the proposal in the New Jersey Register.

22. COMMENT: At N.J.A.C. 7:27-31.3(i), the first sentence should refer to allowances "which are available for use in the current year." For the same reason, the second sentence does not properly define the allowance deduction for end-of-season reconciliation. Before end-of-season reconciliation is completed, allowances that are valid for use may have to be deducted for underutilized opt-in sources. Please see comments 7:27-31.2 for "excess emissions" for further explanation. (9)

(*) RESPONSE: The Department agrees that the first sentence of this provision does not encompass the entire reconciliation process as detailed at N.J.A.C. 7:27-31.17. That is why the first sentence

modifies the concept of holding enough allowances with "pursuant to N.J.A.C. 7:27-31.17." The first sentence also properly uses the phrase "and which are valid for use in the current year." The Department agrees that the second sentence is not entirely accurate in some cases (for example, underutilization of an opt-in source and use of certain number of banked allowances when progressive flow control is in effect). For this reason and because the first sentence adequately refers to the detailed provisions of N.J.A.C. 7:27-31.17, the Department is removing the second sentence upon adoption.

23. COMMENT: At N.J.A.C. 7:27-31.3(l), the wording of this provision makes it sound like allowances cannot be used for trading. The Department should replace the words "of this subchapter" with the words "of the NO_x Budget Trading Program." (9)

(*) RESPONSE: This provision does not prohibit trading nor does it prohibit the use of allowances that have been traded. The purpose of this provision is to specify that the allowances in the NO_x Budget Program may not be used to fulfill the requirements of other programs (for example, the emission offset program or an open market emissions trading program). This subchapter does not impose any requirements upon budget sources located outside of New Jersey. The Department is adding a sentence to this provision upon adoption to clarify that this subchapter does not prohibit the use of allowances issued through this subchapter as authorized through any other State's NOx rules implementing either the OTC NOx Budget MOU or the NOx SIP Call.

N.J.A.C. 7:27-31.4 Opt-in provisions

24. COMMENT: N.J.A.C. 7:27-31.4(a) specifies a source that is not a Budget source may request to opt-in. The Department should add to this section the provisions of 40 CFR 96.80 that the unit must be operating, and is not covered under any retired unit exemption. (9)

(*) RESPONSE: It is very unlikely that one would request a source to be opted into the NO_x Budget Program if it is retired or is not operating. It is also very unlikely that one would request to opt a source into the program if the source had been altered in a manner that would no longer subject it to the requirements of the NO_x Budget Program. The Department is not prohibiting someone from making such a request, but is clarifying upon adoption at N.J.A.C. 7:27-31.4(e)3 that the Department will not approve such a request.

25. COMMENT: N.J.A.C. 7:27-31.4(c) requires submittal of an opt-in application which includes identification of the owner, identification of the source, information on the source's operation in previous 5 years, a monitoring plan, and designation of AAR. Also, existing 31.9(e) requires the opt-in source have an operating permit in accordance with the State's permit process. These provisions are consistent with 40 CFR 96.83, but the Department should clarify if its operating permit rules address the duty to reapply for an opt-in permit. (9)

RESPONSE: The Department's Jersey's operating permit rules at N.J.A.C. 7:27-22 specify the requirements to apply for a renewal of the operating permit every five years. Any facility that includes a budget source would be required to identify each source that is subject to the program (including opt-in sources) and would be required to incorporate the requirements of N.J.A.C. 7:27-31, NO_x Budget Program.

26. COMMENT: The commenter is concerned that the Department's applicability for opt-in sources is too broad and may result in inappropriate sources (i.e., sources with fugitive emissions) attempting to opt-in. The Department needs to limit sources which can opt in to those who emit only through a stack. Although N.J.A.C. 7:27-31.4(e)(2) refers to 7:27-31.14, the latter section allows for exceptions to the 40 CFR part 75 monitoring requirements. An up-front limitation requiring all emissions to be through a stack would make the rule clearer. (9)

(*) RESPONSE: The Department believes that the concerns expressed in this comment are unlikely. It would be nearly impossible to develop an approvable monitoring plan for an opt-in source that does not route its emissions through some sort of stack. However, in order to make it even clearer, the Department is amending N.J.A.C. 7:27-31.4(a) upon adoption as suggested by the comment and modeled after 40 CFR 96.80.

27. COMMENT: Existing 31.4(j) specifies the allocation to an opt-in source will be based on the source's actual average heat input and average baseline emissions during the two consecutive May 1 through September 30 periods out of the last five which represents normal activity. This method is different from the method in 40 CFR 96.84(c) and (d). The Department should revise the provisions in subchapter 31 to be consistent with 40 CFR 96.84. (9)

(*) RESPONSE: EPA's model rule requires installation of CEMS and one full control period of data before the source opts in (to determine the baseline for the opt-in source). The current provision will remain in effect for the 1999 through 2002 phase of the program. The requirement to determine the baseline for an opt-in source as prescribed by the NOx SIP Call will go into effect for the 2003 phase of the program. N.J.A.C. 7:27-31.4(q) is being added upon adoption to reflect the proper baseline determination and procedures for sources that opt into the program during the 2003 phase of the program.

28. COMMENT: Existing N.J.A.C. 7:27-31.4(j) includes provisions for allocating allowances to opt-in sources for the years following approval of the opt-in. These provisions are different from the provisions of 40 CFR 96.88. The Department should revise N.J.A.C. 7:27-31.4(j) to be consistent with 40 CFR 96.88(b). (9)

RESPONSE: EPA's model rules allocate allowances to opt-in sources based on the lower of the baseline heat input or the heat input from the previous control period, not just the baseline heat input. This is a minor difference in allocation methodology which is already accounted for after each control period by the deduction of allowances from opt-in sources to account for utilization of the source below the baseline utilization.

29. COMMENT: The rule lacks any provisions for opt-in sources that subsequently become budget sources under paragraph 1 or 2 of the budget source definition, i.e., a source that is not currently, but later becomes, fossil-fuel fired. The Department should adopt language similar to that in 40 CFR 96.87. In such an instance, a source would change from an opt-in source to a budget source covered by the base emissions budget. Allowances allocated to this emissions source must be removed from the Department's overall emission budget in such a case. The rule should reflect this. (9)

(*) RESPONSE: Although there are no opt-in sources in New Jersey and it is most unlikely that an opt-in source would subsequently be modified so that it would be required to participate in the program,

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the Department has added a new subsection (p) upon adoption. This subsection is modeled after 40 CFR 96.97(a) and requires that the AAR of the opt-in source notify the Department and the NATS Administrator when within 30 days of changing regulatory status. This subsection also references the allowance deductions that would be required because the source would no longer be an "opt-in" source.

N.J.A.C. 7:27-31.7 Annual allowance allocation

30. COMMENT: The commenter strongly endorses a proposed output-based allocation. An output-based allocation is consistent with the overall objectives of electric power industry restructuring: (1) It promotes economic development by removing market barriers to new innovative and efficient generators. (2) It ensures fair and robust competition by eliminating the subsidy created by current disparate federal CAA standards. (3) It rewards efficiency and innovation in the power generation sector. (4) It uses a flexible, market-based mechanism to address air emission concerns.

The output-based allocation also provides several environmental benefits: (1) By promoting efficient generation technology, it provides significant collateral reductions in emissions of other pollutants of concern. (2) It provides a template for mechanisms to reduce emissions of other pollutants of concern. (3) It meets the CAA's objectives of creating market-based solutions to emissions control problems.

These benefits are only fulfilled if the output-based standards are uniform. Equal standards must be applied to all sources of electricity.

An output-based standard is practical to implement. It provides flexibility in the promotion of plant efficiency; permits the measurement of parameters related to stack NO_x emissions and plant efficiency; and is suitable for equitable application on a variety of power plant configurations. Older, existing power plants that operate-according to less strict emissions requirements than newer power plants experience an undue economic advantage in the competitive market because of their lower operating costs.

Unlike current regulations, a uniform output-based standard is applied to all plants. It provides flexibility through a market trading mechanism for individual plants to buy and sell emission allowances in meeting their emission control obligations. Units whose emission rate is below the output-based standard would generate excess NO_x allowances to sell into the market or to bank for future use. Units whose emission rate is above the output-based standard have a variety of options through which they can match NO_x emissions to NO_x allowances, including installation of pollution control equipment, fuel switching, reduction in megawatt hours generated, and use of banked allowances from other affiliated generation units. Thus, an output-based standard coupled with the ability to trade allowances ensures that reductions are achieved cost effectively (i.e., at the lowest achievable cost).

The Department proposes that for each facility, a two-year average net electrical output, using the highest values of ozone-season net electrical output from the three-year period 1996 through 1998 be used.

The commenter strongly disagrees with the use of historical data for allocation purposes. Future operation in a competitive environment will be significantly different from historical operation. There is no valid reason why the Department cannot use actual net energy (electricity and steam)

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output rather than historical output data. After a predetermined assignment of allowances at the beginning of the ozone season, a true-up period should be used at the end of the ozone season to validate the actual net energy output of the facility. Thus, the required allowances will be updated annually.

An actual verses historical based allocation is even more important for Cogenerators and industrial facilities who's output fluctuates with manufacturing production. Historical emissions data cannot reflect the actual current market conditions for manufacturing facilities, and, therefore, use of such data may limit or impede expansion of production facilities in New Jersey. (6)

RESPONSE: The Department agrees that allocating allowances based on the energy output of budget sources has many advantages and the Department has incorporated output based allocation to its allowance allocation provisions. The Department realizes that allowances are not allocated at a uniform rate. This procedure was developed to lessen any potential windfall allocations for sources that emit NO_x at very low rates. The growth reserve concept was developed to allow sources that emit NO_x at a very low rate to draw from the growth reserve if such source emitted more NO_x during a control period than the amount of allowances it was allocated for that period.

This allocation methodology was previously proposed and adopted. The proposal to which these comments were received made changes to the allocation system as needed to fit within the confines of the EPA NO_x SIP Call. The Department decided not to change the basic principles of allowance allocation in the current rule in the proposal. There are advantages to a simpler output based allocation system based on a uniform allocation rate to all budget sources, like the one EPA promulgated in its model rule at 40 CFR 96. However, the Department did not wish to totally reopen the allocation methodology in order to complete the revisions necessary for the EPA NO_x SIP Call in a timely manner.

This proposal does not change the fact that allowances are allocated based on actual operational information from the sources. The Department continues to use the most recent information available to base the allocation of allowances. However, because of the EPA imposed timing requirements of allowance allocation, the Department must use current data to allocate allowances for the 2003 control period and must use 1998-2000 information to allocate allowances for the 2004 control period.

31. COMMENT: The Department's plan should treat all affected generators as equitably as possible. New and existing sources should receive comparable allocations, measured in terms of the number of emission allowances per unit of electrical output.

Electricity is a commodity. Any two Megawatt-hours (MWhs) of electricity are essentially indistinguishable from one another in terms of their usefulness to end-use customers. Of course, electricity generated at different power production sources often have significantly different emissions profiles (and other attributes, such as reflecting the effects of transmission congestion). The Department should adopt a method for allocating NO_x allowances that does not reward power plants with higher emissions rates. Consistent with the competitive framework for generation markets, the Department's regulations should not give any one generator a clear competitive advantage over another generator by providing them with differing levels of emissions allowances per MWh output.

This perspective recognizes that it is essential that owners of power plants competing to provide electrical generation service to New Jersey consumers do so on a level playing field. In enacting electric industry restructuring legislation in 1999, New Jersey embraced a competitive generation market. To be consistent with the goals of this Act, the Department's method for allocating allowances to generators should treat them equitably. Equity requires the establishment of a new source/growth reserve of sufficient size to cover all new generators and the allocation of allowances based on the same rate to all generators affected by these regulations.

EPA clearly favors equitable treatment of new sources. EPA's model rule states that "new sources should receive allowances at the same rate as that applied to existing sources" (Federal Register Vol. 63, No. 207, Pg. 57471). EPA's primary requirement -- maintenance of the emissions cap - will likely require a lower allocation rate to existing facilities in order to provide an equal rate to new facilities. In order to maintain the overall budget for allowances while allocating allowances at comparable rates, the commenter proposes that all generation - whether from new or existing generators - be allocated emission allowances for the year 2003 at a rate that reflects the total budget for generating units divided by total generation, including expected output from new units.

The importance of a fair allocation goes well beyond simple equity in the marketplace. The method of allocation has implications for whether new generation will be built at all and the manner in which units are operated. A fair allocation will help support the introduction of additional new clean and efficient generators into the fleet of power generation facilities. (10)

RESPONSE: The Department has strived to allocate allowances in an equitable manner. The Department has set-up the allocation methodology in a "cleanest first approach." This is evident in the establishment and use of the New Source/Growth Reserve and the Incentive Reserve. These reserves are set aside before allocating allowances to all budget sources to provide incentives for energy efficiency and renewable resources of electricity (which prevent NO_x emissions) and provide allowances from low-NO_x emitting sources to draw from if they expand operation between the time of allocation and the control period for which allowances are allocated. As mentioned in the response to the previous comment, New Jersey does not allocate allowances at a single rate as in the EPA model rule.

Regarding the allocation of allowances to New Sources, New Jersey's approach is different than that in EPA Model Rule. EPA's model rule allocates allowances to new sources at the allocation rate used for other sources. EPA's model rule also requires any such new source to use allowances based on this allocation rate and not at their actual emission rate. New Jersey, on the other hand, holds allowances for new sources in the New Source/Growth Reserve until the actual emissions of the new source for the control period are known, and then distributes allowances equal to the source's emissions to the source's compliance account (unless demand on the reserve outweighs supply, in which a lesser amount of allowance would be distributed into the compliance account).

New Jersey's allowance allocation approach is fair to new sources in that the allocation methodology allocates allowances to new sources based on their actual emissions until enough information about the operation of the source is available for allocation as an existing source.

Timing

32. COMMENT: While the amendments to Subchapter 31 reflect the SIP Call timing requirements to allocate to the reserves prior to the control periods, the Department should clarify when the post-

control period allocations will be completed. The allowance transfer deadline is November 30, therefore any post-control period allocations must be done by then. N.J.A.C. 7:27-31.7(e)2 refers to the Department allocating from the New Source/Growth Reserves after October 30. Not only should this date be emphasized up-front in the section, but the Department should realistically consider if this date gives them enough time to complete the work. The commenter expects to receive third quarter emission reports on or shortly before October 30, so the Department will only have four weeks to complete the allocations. (9)

RESPONSE: The Department is aware that there is one month between the deadline for third quarter emission reports and the allowance transfer deadline in the years 2003 and beyond. The Department will need to use the data from the third quarter reports to allocate allowances from the New Source/Growth Reserve. The Department will also need to review and approve the claims for Incentive allowances in this time period as well. The Department expects that these procedures will be routine by the year 2003 and is confident in its ability to perform the process of allocating the reserves accurately and in a timely manner that would allow trading of such allowances one or two weeks before the allowance transfer deadline.

33. COMMENT: In the proposed amendments there is an allowance allocation timing requirement under which the Department must allocate year 2003 allowances by September 30, 1999, and must allocate following years' allowances by April 1 three years before the control period in which the allowances may first be used. This is a welcomed change from the current rule in which the allocations are not known until one month prior to the beginning of the control period. With this amendment, compliance will be made somewhat easier because allocations will be known at least three years in advance. The commenter commends the Department for this change. (7)

RESPONSE: The allocation of allowances three years in advance of each control period for the phase of the program beginning in 2003 is a USEPA requirement listed in it's SIP Call. The Department hopes that the benefits to budget sources in being able to plan for compliance outweigh any inconvenience from of using older information as the basis for allocation.

34. COMMENT: If we examine the proposed amendments in conjunction with the existing rule, NO_x Budget sources that will discontinue operating in the Year 2000 to Year 2003 time frame appear to have a curious allocation scheme. The proposed amendments at N.J.A.C. 7:27-31.7(j) stipulate that "the Department shall not allocate any allowances to a budget source that is no longer in operation at the time that allowances are being allocated."

For example, the amendment requires that the allocation of allowances for Year 2003 will occur by September 30, 1999. Therefore, any source still operating on September 30, 1999, will receive allowances for Year 2003. Allowances for Year 2004 will be allocated by April 1, 2001, and by implication, any source still operating on April 1, 2001, will receive allowances for Year 2004.

Under the existing rule at N.J.A.C. 7:27-31.7(b), a source operating on April 1, 2000, and April 1, 2001, will also receive allowances for the Year 2000 and Year 2001 (assuming of course that the source has operated during the previous two or three control periods).

The situation becomes interesting if a source ceases operating on May 1, 2001. In this case, under the existing rule, the source will have allowances for Year 2001. Under the proposed amendments, the source will also have allowances for 2003 and 2004. Therefore, a source ceasing operation on

May 1, 2001 will have NO_x allowances for three years during which it will have been shutdown: Year 2001, Year 2003 and Year 2004.

The table below summarizes the commenter's understanding of the allowances that will have been allocated for each year given the hypothetical retirement date of a budget source shown in the left-hand column. Note that if the budget source retires in May 1, 2000, it will receive two years' worth of NO_x allocations, even though it will be shutdown during those two years. If the source is retired in May 1, 2002, or May 1, 2003, it will receive four years' worth of NO_x allocations, even though it will be shutdown during those four years.

Years for which NO_x Allowances will have been Allocated							
Retirement Date	2000	20001	2002	2003	2004	2005	2006
5/1/2000	✔			✔			
5/1/2001		✔		✔	✔		
5/1/2002			✔	✔	✔	✔	
5/1/2003				✔	✔	✔	✔

Section II.B of the summary section of the proposed amendments states that "the provision would not, however, require that the owner or operator of a source that has ceased operating return the allowances that have been allocated for that source." The commenter requests that the Department confirm that the above table accurately describes the allocations for a source with these hypothetical retirement dates. If the intent is to provide three years of allocations to retired sources then it appears that there is an error in the way that the proposal has been presented. (7)

RESPONSE: The commenter is correct. The adopted rule contains a transition of allocation timing between the 1999-2002 phase of the program and next phase of the program beginning in 2003. The Department will not allocate allowances to retired sources in either of these phases of the program. However, because allowances are allocated three years before the control period for the years 2003 and beyond, by the time the control period approaches, a particular source may no longer be operating. No one is able to accurately predict which sources will and will not be operating three years from any point in time. The commenter accurately depicts one of the disadvantages of allocating allowances three years in advance of a particular control period. In such case where allowances are allocated to a source that subsequently retires, market forces will decide what happens to those allowances. The owner of those allowances may use them for expanded operation of other generating units it owns. The owner may decide to sell them to another unit that will be operating more because the retired unit is not operating. Once allowances are allocated properly, the owner of those allowances should be able to use them freely within the NO_x Budget allowance market.

35. COMMENT: The Department should clarify N.J.A.C. 7:27-31.7(j) by including the provisions of 40 CFR 96.5(c). Are units which don't operate allowed to continue to hold allowances and emit NO_x? This could be a double-counting issue. Will these units be surrendering their permits? (9)

RESPONSE: The purpose of this subsection is only to prevent units that are no longer operating from receiving allowances based on their operation during previous years. This provision does not

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relieve a budget source from meeting the monitoring, reporting and allowance requirements of the Program. In order for a budget unit to be exempt from these requirements, it must apply for an exemption under N.J.A.C. 7:27-31.16(e) through which the source must be shown to be permanently shutdown. If a source (that at one time would be subject to this program) is not operating, it would not be emitting any NO_x and would therefore not need to use any allowances. There is no "double-counting" issue because this provision does not permit a source that is subject to the program to emit NO_x without proper authorization (that is holding enough allowances by the allowance transfer deadline to authorize the emissions of NO_x during the applicable control period).

36. COMMENT: The rules and incentives promulgated by the Department and the Board of Public Utilities (BPU) should be in confluence with regard to the operating patterns of cleaner-burning facilities. The NO_x allocation rules should not increase the risk associated with moving towards dispatchable status by making it difficult for dispatchable cleaner-burning facilities to receive all the allowances they require to operate. It is possible that some of these proposed changes could be deleterious to cleaner-burning facilities under certain circumstances, especially when they operate on a dispatchable basis.

The commenter is generally supportive of the Department's efforts to improve New Jersey's air quality. However, these efforts should not confound the BPU's efforts to create a more flexible energy marketplace, nor should they cause a perverse result wherein the cleanest-burning facilities are restricted from operating to the maximum possible extent. There are several principal issues in the proposal which should be addressed to assure that cleaner-burning facilities can operate to the maximum possible extent without having to purchase allowances or curtail operations.

The use of ozone seasons several years in the past to develop the three-year rolling average for allowance allocations could be damaging to dispatchable cleaner-burning facilities. The commenter originally supported the three-year rolling average because it permitted allowance allocations to adapt to changing generation performance. However, under the proposed changes, which propose a time lag of years between changes in output and actual allocations, dispatchable facilities could experience years of allowance shortfalls before their allocations catch up with reality. As a result, even if such dispatchable facilities are called upon, they might not have the necessary allowances to operate. As a consequence, New Jersey's electricity may be generated by dirtier facilities which control more allowances simply because they operated at a greater capacity factor during an ozone season five or six years earlier.

Therefore, provisions should be included to assure that clean dispatchable facilities - especially those operating at low capacity factors during the ozone seasons of 1996 through 1998 - receive enough allowances to operate at the maximum extent possible.

RESPONSE: The Department's allocation methodology accounts for operational changes at dispatchable units by providing low NO_x emitting sources allowances beyond their initial allocation through New Source/Growth Reserve. Both the Department and the Board of Public Utilities are encouraging the use of clean sources of electricity through policies and rules.

Budget Size

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37. COMMENT: The Department has indicated that the proposed 2003 budget was based on a requirement that 1990 budget sources operate at emission rates equal to the greater of 0.15 lb/MMBtu or a 90% reduction from the 1990 rate, or if the source has a permit limit lower than 0.15 lb/MMBtu, the permit limit. It is presumed that the 1990 heat input was used to determine the total tonnage cap. This would give the appearance that the basis of the New Jersey budget and allocation system was similar to that of the federal program, which was also based on a 0.15 lb/MMBtu standard. There are major differences in how the final budgets in each program were derived, however, and these differences should be acknowledged at this time.

The Department's budget was derived from a stricter version of that set forth in the OTC MOU, which was originally based on a 0.15 lb/MMBtu or 75% reduction standard. It had been determined at the time of proposal and adoption that the stricter limits would be necessary to come close to the proposed federal goal of an overall 0.15 lb/MMBtu standard. But because the New Jersey budget used the 1990 baseline heat input, there was no accommodation for growth, and when the decision was made to include new sources in the budget system, without the addition of any more allowances, the overall effective emission rate for budget sources began to be driven down each year as heat input increased. Inherent in this allocation scheme is the principle that the absolute value of the budget, as determined from the 1990 baseline, is more important than the effective emission rate of any or all sources.

Due to this effect, the currently proposed 2003 New Jersey budget now has an effective overall emission rate below 0.15 lb/MMBtu. Without considering the reserve accounts, this overall effective rate (calculated by dividing the total pounds of allocations by the total average 1996 - 1998 heat input upon which the allocation is based) is 0.10 lb/MMBtu. If the reserve accounts are added to the allocated pounds, the rate is 0.12 lb/MMBtu.

The federal budget, on the other hand, has been designed so that the effective overall emission rate is 0.15 lb/MMBtu, with more weight given to applying this as a uniform emission rate goal across the system as it now operates than in maintaining an absolute tonnage relationship to the 1990 baseline. In adopting the final federal rule, EPA indicated that it declined to use a 0.12 lb/MMBtu standard for electric generating sources because it might be technologically too difficult to attain and could cause reliability problems for the electric power generation and distribution system. The federal program relates its budget, and not just allocation system, to the 1995-1996 operating period to bring the budget in line with current reality. It also factors in growth to the year 2007.

The New Jersey portion of the federal NO_x Budget program is derived relying on the idea that over 10,000 tons could be allocated to currently regulated budget sources. It has been developed with the aid of extensive modeling, and EPA has weighed air quality and technological issues along with economic costs in a process which continued past the OTC MOU process. This federal budget amount is significantly greater that the 8,200 tons proposed to be allocated under the New Jersey NO_x Budget program. The Department should increase the New Jersey Budget within the bounds of the federal program, up to the Phase III default of the OTC MOU process. It should not force a competitive disadvantage on New Jersey business compared with business in other states operating within the federal program. (5)

If the Department is determined to generously allocate 15% of the NO_x allowances to New Source/Growth Reserve and Incentive Reserve, it should be equally generous in allocating NO_x allowances to pre-1990 electric generating sources. The Department has ample leeway to do just that. For example, the Year 2003 allowances for NO_x budget sources in Table 31.7(l) totals 8,200 tons. This table includes several non-electric generating sources. If the NO_x allowances for only

the electric generating sources are summed, then the sum of allowances in Table 31.7(l) is less than 8,000 tons. This 8,000 tons should be contrasted with the 10,384 tons that the EPA has budgeted for electric generating sources in New Jersey for the Year 2003 and beyond (Table is at the end of Section I.B of SUMMARY). The difference in the Department's total allowances and the USEPA's NO_x Budget for this category of sources is approximately 2,500 tons. There is nothing that precludes the Department from allocating the additional 2,500 allowances to pre-1990 electric generating sources. The commenter strongly urges the Department to do so. (7)

The commenter acknowledges New Jersey's bold action in establishing a 90 percent NO_x reduction target for 2003 and beyond. Through this action, New Jersey is leading the charge for deeper NO_x reductions throughout the region. It is essential, however, that New Jersey's reductions be made within the context of a consistent regional strategy. If OTC states upwind of New Jersey do not follow New Jersey's example, but instead require only the 75 percent reduction in NO_x emissions called for in the MOU, the inconsistency is most likely to cause either (i) a shift of electric generation to those upwind states, with more NO_x emissions being generated as a result, or (ii) a transfer of money to owners of sources in those upwind states, in exchange for the surplus allowances held by those sources.

For this reason, failure to achieve uniform regional NO_x reduction levels will leave New Jersey short of solving its ozone problem, while continuing to leave the State and its affected sources at an economic disadvantage. (11)

RESPONSE: The Department did not propose to change the budget figure of the 2003 phase of the NO_x Budget Program. This amount (8,200 allowances) is based on a NO_x control level of 0.15 lb/MMBtu or 90% reduction from the 1990 OTC NO_x Budget Inventory. This is the level of control prescribed in the previously adopted rule. The Department did not propose to change this control level. Although this amount differs from the amount listed in EPA's final SIP Call inventory, the federal requirements of the EPA's SIP Call require that the state's cap and trade program budget be greater than the amount listed in EPA's SIP Call for New Jersey. The level of control previously adopted conforms with EPA's SIP Call requirement and is being relied upon in New Jersey's NO_x SIP Call submission for compliance with the State's overall NO_x Budget for all sectors. The current size of NO_x budget is necessary for the achievement of the air quality standards in New Jersey and is not expected to adversely affect the electric generation industry in New Jersey.

Output

38. COMMENT: The Department should adopt its proposed output-based standard starting in 2003, two years earlier than proposed in the rule. For the year 2005 and beyond, the Department's proposed rule properly allocates allowances in a manner that takes into account the efficiency of generating units, by allocating allowances based on generation output rather than fuel input.

The commenter strongly supports this method of allocation, because it rewards production efficiency, consistent with the goals of competitive electric markets where generators compete on price per unit of electric output. This approach also recognizes the benefits of the efficient use of fuel in meeting New Jersey's electric needs. The commenter strongly encourages the Department to adopt this output-based allocation approach for the years 2003 and 2004, as well for 2005, as proposed by the Department, given that there are relatively straightforward ways to collect the data from sources that would be necessary to allocate allowances to them based on historical output. In order to overcome the data gaps that the Department believes inhibit the use of this preferred

approach until 2005, the Department should require electric generating sources to file historical generation data for New Jersey plants. (10)

RESPONSE: The Department's policy is to begin allocating allowances based on output as soon as possible for the phase of the NO_x Budget Program beginning in 2003. Unfortunately, given that the Department has not previously collected such data from all budget sources, given that the Department does not currently have this information, and given that allowances must be allocated at least three years in advance of each control period for the years 2003 and beyond, the earliest output based allocation can occur is in 2002 for the 2005 control period (based on 2000 and 2001 output information).

39. COMMENT: Allowance allocation based on net output. Under the proposed amendments to N.J.A.C. 7:27-31.7(d)3iii, allowances will be allocated based on net electric output beginning with the 2005 ozone season. If all states with budget programs were to use the same method to allocate allowances, the commenter would agree that the net output is the allocation method of choice. In the absence of that uniformity, however, the commenter believes that allowances in 2005 and thereafter should be allocated on the basis of gross output of electricity, rather than net output.

Sources typically track gross electric output for reporting purposes, and track their net electric output only for internal purposes. The manner in which this data is collected can vary widely among different generating sources, resulting in potential discrepancies. It will impose a substantial burden on EGU budget sources to modify their net electric output tracking to conform it with a consistent standard format. It will also impose an additional burden on the Department's scarce enforcement resources, because verifying compliance with the rule will require the additional step of reviewing a source's methods of recording the deductions from gross output that are required to arrive at a net output figure.

In the adoption of the current NO_x Budget rule, the Department promised to work with the facilities reporting data and with the USEPA in order to minimize the burdens of reporting the net output data. The commenter requests that in its response to comments, the Department discuss the progress which has been made in that effort.

The Department has stated that it prefers to use net output data because the net data is truer to the output-based allocation concept, and better addresses generation efficiencies. The commenter recognizes these advantages. However, the Department should recognize the results of using net output data in a regulatory environment in which other states can choose to use gross output data or even heat input data in allocating allowances. The use of net output data will simply result in a smaller allocation of allowances than a gross output approach. It will also result in a smaller allocation of allowances than a heat input approach which is based on a standard equivalent to the 1.5 lb/MW-hr standard proposed in N.J.A.C. 7:27-31.7(d)3iii.

Using net output data therefore simply exacerbates the results of setting a budget which requires greater emission reductions than the rules of neighboring states. The use of net output data will add to the likelihood that New Jersey's rules will cause either (i) a shift of electric generation to those upwind states, with more NO_x emissions being generated as a result, or (ii) a transfer of money to owners of sources in those upwind states, in exchange for the surplus allowances held by those sources. Again, the inconsistency between New Jersey's rules and the rules of neighboring states such as Pennsylvania will leave the New Jersey short of solving its ozone problem, while continuing to leave the State and its affected sources at a severe economic disadvantage.

The commenter recognizes that the existing rules already provide for allowance allocations based on net electric output. However, the proposed amendments and new rules reflect the Department's decisions in response to the NO_x SIP Call, which did not dictate the use of either an input-based, gross output-based, or net output-based allocation approach, and which provided only an input-based approach as an example. For that reason, the Department's choice of allocation approach in response to the NO_x SIP Call would appear to be a relevant subject for public comment. We therefore respectfully request that the Department respond to this issue. (11)

RESPONSE: The commenter is correct that the rules allocate allowances based on net output. This concept was previously incorporated into the rule. Because allowance allocation methodology is left to each State's discretion, there will likely not be exact consistency in allocation methodology from state to state without a mandate or interstate agreement. Consistency of monitoring and reporting and use of allowances are paramount to the multistate program rather than allowance allocation. The Department has coordinated efforts with other states and USEPA and electricity generators in the "Updating Output Emission Limitation Workgroup." Information reported to this group suggests that net electricity output data is readily available to be reported. This is the amount of electricity that is actually sold by generating units and is typically measured at the high-voltage side of the power-bus at a generating plant. Allocating allowances based on net output rather than gross output basis better captures the concept of energy efficiency at the electricity generator. The net electricity output data is the amount of electricity that is actually sold to the grid, while gross electricity output data includes electricity that is used at the plant. Regarding the point that fewer allowances would be allocated on a net output basis than on a gross output basis, the total number of allowances to be allocated is exactly the same in either case. By using a net output as the basis, those budget units with the greatest operational efficiencies would get more allowances on a net output basis than a gross basis, and those budget sources having the least operational efficiencies would get fewer allowances on a net basis than a gross output basis. The Department will be collecting year 2000 net output data this year and will gather stakeholders together to formalize the process of gathering the output information required by the rule.

Attainment Reserve

40. COMMENT: Regarding the automatic adjustment of 2003 budget with regard to the attainment reserve, because the proposed N.J.A.C. 7:27-31.7(d) reduces the New Jersey 2003 budget by 4,822 allowances each year, but N.J.A.C. 7:27-31.3(b) provides for an automatic downward adjustment of the initial budget should the USEPA revise 40 CFR 51.121 to indicate that fewer allowances be allocated to New Jersey, there is a potential for the budget to be cut back to an even more extreme level than already proposed. Even if the Department decides to continue with the allocation of only 8,200 tons within the New Jersey Budget beginning in 2003, these provisions should be clarified to ensure that this does not happen. (5)

N.J.A.C. 7:27-31.3(b)2, 31.7(d). N.J.A.C. 7:27-31.3 asserts that the base emission budget for New Jersey is 13,022 tons of NO_x for the year 2003 and each year thereafter. That base budget can be reduced if the USEPA establishes a lesser number of allowances that could be allocated to budget sources in New Jersey. However, under N.J.A.C. 7:27-31.7(d), even if New Jersey's base emission budget shrinks as a result of such USEPA action, the Department will still transfer 4,822 allowances each year into the Department's attainment reserve account. As a result, if the USEPA were to establish a New Jersey budget of 12,022 tons of NO_x, only 7,200 allowances would be made available for use by budget sources.

The Department has stated its belief that in 2003 and thereafter, 8,200 allowances should be made available each year for use by budget sources. The commenter expects that this belief would be unaffected by a USEPA decision to establish a New Jersey budget of less than 13,022 tons. The commenter therefore suggests that if the Department continues to conclude that the 8,200 allowance figure is appropriate (notwithstanding concerns about regional consistency), the second sentence of N.J.A.C. 7:27-31.7(d) should be replaced with the following:

> "Before the allocation deadline, the Department shall transfer allowances from New Jersey's base emission budget for the control period for which allowances are being allocated into the attainment reserve account held by the Department, such that 8,200 allowances remain to be allocated. If the USEPA requires that allowances representing less than 8,200 tons of NO_x be allocated to budget sources in New Jersey pursuant to 40 CFR 51.121, no allowances shall be transferred into the attainment reserve account." (11)

(*) RESPONSE: The commenter is correct in that the Department intends to have 8,200 allowances available for allocation for the years 2003 and beyond. The current Base Budget is 13,022 allowances and is less than what EPA currently prescribes for the sources subject to this rule under the SIP Call. If, pursuant to 40 CFR 51.121, USEPA changes the inventories/budgets for sources subject to this rule top an amount less than 13,022 allowances, then the definition of "base emissions budget" at N.J.A.C. 7:27-31.2 and the provision at N.J.A.C. 7:27-31.3(b) provide that the budget would automatically change this figure. The Department has clarified N.J.A.C. 7:27-31.7(d) upon adoption so that it is consistent with the other provisions within the rule which state that there will be 8,200 allowances available for allocation no matter how many more allowances the base emissions budget is. This provision is also clarified to address the possible, but unlikely, situation that USEPA determines that New Jersey's Cap and Trade budget figure must be less than 8,200 allowances. In such a case, the references to 8,200 allowances in the provision of N.J.A.C. 7:27-31.7(d) and (e) would be replaced by the USEPA budget figure.

41. COMMENT: N.J.A.C. 7:27-31.7(d)4ii(2). Under the Department's original proposal of the existing NO_x Budget rules, if the sum of all allowance allocations was less than 8,200, then any remaining allowances would be allocated to the Department's discretionary account. Comments the Department received on that proposal, contended that those remaining allowances should instead be allocated to budget sources. In response, the Department made the following statement:

> The Department agrees that the Phase III allocation system should allocate all of the 8,200 allowances which comprise the Phase III New Jersey NO_x Budget and should not withhold any of these allowances in the "attainment reserve." [30 N.J.R. 2686, July 20, 1998, Response to Comment 104]

Contrary to this statement, however, proposed N.J.A.C. 7:27-31.7(d)4ii(2) continues to provide that allowances will be withheld in the Department's attainment reserve account. Given the extremely tight Statewide allocation of 8,200 allowances, New Jersey sources cannot afford to have additional allowances transferred to the attainment reserve. The commenter therefore recommends that the allowances which the Department proposes to transfer to the attainment reserve under N.J.A.C. 7:27-31.7(d)4ii(2) should instead be allocated to budget sources that are not new budget sources, in proportion to their preliminary allocations under N.J.A.C. 7:27-31.7(d)3. (11)

The commenter offers a re-iteration of a comment made in response to the proposal of the original NO_x Budget rule, regarding the placement of 'leftover allowances' into the attainment reserve, given that there has been no change to the rule despite the Department's indication that a change was anticipated:

> A key component of the NO_x Budget program, as well as the larger program envisioned under OTAG, is the trading mechanism which is intended to equalize and minimize the overall costs of NO_x reduction strategies. The allocation scheme proposed for 2003, however, all but eliminates the trading option (at least in New Jersey).
>
> For trading to take place, some sources must be allocated excess allowances so that they can sell them to sources which do not have enough. The way this is usually seen as working, sources which have emission rates below a prescribed target (clean sources or those that have made emission reductions) are allocated more than they need, and sources which have emission rates above a target are allocated only to the target and must acquire the additional allowances they need, presumably from the 'cleaner' sources. For a trading mechanism to function adequately and provide a benefit, the designated target around which allocations are made must be set below the emission levels of existing sources, but above the level of ultimate technological capabilities, i.e. the level of new, clean sources or the level to which older sources are capable of reducing. (EPA has set budget goals using, as such a basis, a target rate at 0.15 lb/MMBtu.)
>
> In the initial allocation period (1999 - 2002), sources which were existing in 1990 are allocated less than they would need if they were still operating at 1990 emission rates, but more than they would need if every source made every emission reduction possible. The allocations are based roughly on a target of 0.2 lb/MMBtu, more or less the desired average emission rate for this first phase of reductions. NO_x Budget sources are now trading around this standard.
>
> Starting in 2003, however, under the proposal as it stands, sources which have made reductions will be allocated few, if any, excess allowances. This is because any source with an emission rate below the 0.15 lb/MMBtu target is slated to receive only an amount slightly over actual emissions (halfway between actual and permitted emissions). The 2003 allocation scheme provides that sources with emission rates above 0.15 lb/MMBtu will be allocated based on a 1.5 lb/MW-hr (or 0.15 lb/MMBtu) standard, implying that these sources are expected to still exist. But without a pool of excess allowances to draw from, there is actually little ability for these sources to continue operation at a steady level. (The allocation to these sources is less than they need to compensate for their actual emissions, and if the cleaner sources are not allocated more than they themselves need, there are no excess allowances to be traded and used.)
>
> The overall effect of the 2003 allocation scheme, therefore, is to actually do away with the cap-and-trade program. In its place is the establishment of a new command-and-control emission standard of 0.15 lb/MMBtu. Budget sources meeting this limit are the only sources able to continue operation, and they are allocated basically what they need to run. Any emissions not allocated to these sources are placed in the 'discretionary account', and are not part of any trading process.
>
> Hopefully, eliminating the cap and trade process was not the Department's intent in setting up the 2003 allocation system. Depending on what was intended, there are a number of options to correct this situation. Starting with whatever emissions cap is desired for the year 2003 (the EPA mandated cap is recommended), the following allocation systems are possible:
>
> 1. Leave the allocation scheme as is, but instead of placing any allowances into the discretionary account, distribute 'leftover' allowances to all sources, proportional to their preliminary allocations, until the cap is reached.

2. Leave the allocation scheme as is, but instead of placing any allowances into the discretionary account, distribute 'leftover' allowances to 'clean' sources only proportional to their preliminary allocations, until the cap is reached.
3. Change the allocation scheme to truly reflect a 'generation performance standard' by dividing the cap by the total generation component used in determining allocations (or determining a single standard by some other criteria), and distribute all allowances based on a single standard, regardless of the actual emission rate of any individual source.

Each of these options allows for at least some trading around an average target emission rate, either openly designated or embodied in the numbers, upholding the cap and trade philosophy. The difference between each option is the extent to which the Department chooses to maintain separate requirements, in recognition of differing circumstances, of older and newer sources. (The societal benefit of having existing sources continue to operate through their functional lives would be a consideration in this regard.)

(NOTE: While it could be argued that sources in need of allowances might be able to go out-of-state to acquire them, the Department should not be setting up a system that depends on an influx of allowances from other states. It should be providing a coherent system in which trading could be utilized by New Jersey sources even if New Jersey was isolated with its own budget in place.)

The Department is urged to set up an allocation scheme which allocates all budget allowances for each year. (5)

RESPONSE: In proposing these amendments, the Department considered prorating the allowances allocated to budget sources upward so that all of the 8,200 allowances would be allocated. The Department decided against this concept so that sources will not be allocated allowances at a rate more than 0.15lb/MMBtu (0.20 lb/MMBtu for industrial process heaters). This policy is taking precedence over allocation of all 8,200 allowances. The allocation of allowances at a rate of no greater than 0.15 pounds per MMBtu (0.20 pounds per MMBtu for industrial sources in the years 2003 and beyond) is a long standing policy that has been consistently in place since the establishment of this program. Examples of this policy can be seen in the response to comments on the previous adoption of these rules (see 30 N.J.R. 2672, response to comment 60 and 30 N.J.R. 2776, response to comment 73, 7/20/1998).

New Source/Growth Reserve and Incentive Reserve

42. COMMENT: The Department's rule should reserve a sufficient number of allowances - 20-30% -- to cover the growth in generation likely to occur from new units in the state. The Department's current proposal for a new source/growth reserve is inadequate to cover allowances for new generators that can reasonably be expected by 2003-2005.

For example, according to the Department's proposed rule, even using the emissions allowance formula for new sources as proposed by the Department (which the commenter thinks is too low relative to the rate used for existing units), the Department's proposed new source/growth reserve is sufficient to satisfy only 5,000 MW of new generation. Based on new power plant developers' application for interconnection studies with PJM, over 12,000 MW of new plant capacity has been proposed for New Jersey. If the allowance allocation rate for new generators were increased to a level compared to that of existing budget sources, then the likely shortage in the proposed new source/growth reserve (with 10% of the allowances) would get worse. The commenter proposes to

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solve this problem by establishing a new source/growth reserve equal to 20-30% of the overall allocation.

The requirement for a much larger new source/growth reserve comes directly from the fact that new units will account for a large portion of generation by the year 2003-2005. Even assuming that a large percentage of the proposed units does not ultimately come online, it can be expected that new units will account for anywhere between 20% and 30% of the generation facilities in New Jersey, and is developing approximately another 1,500 MW of new gas-fired generating capacity in the state. (10)

RESPONSE: The Department is retaining the proposed size of the new source/growth reserve (that is, 10% of the budget, which equals 820 allowances) in this rule. This figure is much greater than USEPA's recommended level of two to five percent. This figure was also based on the amount of expected new generation based on permitting activities within the Department. Currently, there is over 7,000MW of planned capacity in air pollution permit applications currently under review. Not included in this figure are applications that have been withdrawn. The Department is unable to amend the size of the new source/growth reserve at this time. If there is a clear need for a large new source/growth reserve in the future (for example, if significantly more capacity is approved from construction than 5,000MW), the Department will propose amendments to the rule at a future date to address the size of the new source/growth reserve.

43. COMMENT: In N.J.A.C. 7:27-31.7(d), the Department allocates 10% of the budget as a set-aside to the New Source/Growth Reserve. The 10% set-aside begins for the 2003 control period and each year thereafter. However, EPA's model rule at 40 CFR 96.42(d)(1) indicates that "each allocation set-aside will be allocated NO_x allowances equal to 5% in 2003, 2004, and 2005, or 2% thereafter, of the tons of NO_x emissions in the State trading program budget..." Although the Department's 10% set-aside figure differs from EPA's model rule, it could be acceptable to EPA since it is more stringent to the extent that NO_x emissions from EGU's and non-EGU's will be lower than if EPA's 5% set-aside figure were used. In any case, the Department's rule calls for any unused set-aside allowances to be returned to the core sources in accordance with EPA's model rule. (9)

RESPONSE: The Department agrees that a set-aside amount it has chosen would not interfere with the approvability of the NO_x Budget Program in New Jersey to be a part of the multistate program. The Department is making one clarification to the summary of the proposal with respect to allowances that are left-over in the Incentive Reserve or New Source/Growth Reserve. In the summary of the proposal, a statement was made that remaining allowances would be allocated to the NO_x Budget sources that operated during the most recent control period in the same proportion as what was most recently allocated. The regulatory language proposed, and adopted herein, only allows such allocation to the extent that the allowance allocation was pro-rated downward and the rest of the allowances in the reserves would remain in the reserve and be available in the following year (see N.J.A.C. 7:27-31.7(e)4iii). The reason for this limitation is to prevent allowance allocation at a rate greater than what would have been originally allocated if no downward pro-rating took place.

44. COMMENT: In N.J.A.C. 7:27-31.7(d)3ii(1)-(2) and 31.7(e)1ii, the Department refers to an allowable emission rate (AER) of 0.20 lb/MMBtu for non-EGUs. The Department's AER for non-EGUs is contrary to EPA's model rule which stipulates 0.17 lb/MMBtu (see 40 CFR 96.42(c)(1)). Although the Department's AER is less stringent than EPA's model rule, it could be acceptable to

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EPA as long as the Department demonstrates that the NO_x reductions achieved by their trading rule will meet the statewide 2007 budget. (9)

RESPONSE: Again, the Department believes that it's allocation methodology is approvable for the purposes of participation in the multistate program, even though the methodology differs from EPA's model rule as mentioned in the comment. This difference does not affect the rule's conformity with the criteria for approvability.

45. COMMENT: The allocation of 10% of NO_x Allowances to New Source/Growth Reserve and an additional 5% to the Incentive Reserve is excessive. This unfairly forces sources that were operational in 1990 to offset all emissions from the following:

a) new sources which came on-line after 1990
b) natural gas-fired facilities that over-complied
c) environmentally beneficial technologies and energy conservation efforts.

This excessive allocation of NO_x allowances to New Source/Growth Reserve and Incentive Reserve takes credits away from stationary sources and awards them as incentive credits for natural gas-fired units, energy conservation programs and the use of environmentally beneficial technologies. These deductions are in addition to the deductions taken from existing sources to offset all new major stationary source NO_x emissions. The Department is effectively short-changing pre-1990 sources. (7)

RESPONSE: The 2003 phase of the program does not allocate allowances to sources based on their operation in 1990. This aspect of the allocation that exists in the 1999-2002 phase of the program is a transitional aspect in preparation for the 2003 phase. In the 2003 phase, all sources that exist at the time of allocation are treated the same, allowances are allocated at a rate no greater than 0.15 lb/MMBtu. After the allowances in the reserves are distributed, if there are any allowances left over in these reserves, these allowances are distributed back to the sources to the extent that the allocation was cut back before the ozone season. To clarify the purposes for which the reserves are set up, the new source/growth reserve is set up to allow sources that emit NO_x at a rate less than 0.15 lb/MMBtu to draw from this reserve if they are underallocated for a control period. The sources allowed to draw from this reserve are not limited to gas-fired units. Because a significant amount of new generation capacity is planned to be installed in New Jersey, and since the Department will be allocating allowances 3 years before each ozone season, a new source/growth reserve at 10% of New Jersey's NO_x Budget is a reasonable size. Similarly, the incentive reserve is designed at a level that is reasonable based on the amount of electricity conservation and renewable energy generation predicted to occur and based on an appropriate incentive quantity.

46. COMMENT: In the current rules, the Department established reserves to allow for development of new sources (New Source Reserve) and increased use of existing clean sources (Growth Reserve) and established a methodology for allocating allowances to those Reserves. Under the existing rules, the number of allowances in these reserves is based upon projected need and is not restricted. The allocation methodology favors the allocation of allowances to eligible new and growth sources.

The Department proposes to combine separate reserves for New Source and Growth and establish a fixed allocation to the new combined New Source/Growth Reserve. The Department proposes to significantly change N.J.A.C. 7:27-31.7 to eliminate the calculations of allocation to the existing reserves and allocate 820 allowances to the New Source/Growth Reserve. The effect of these

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changes is to establish competition between new sources (which are inherently clean) and existing clean sources such as Carneys Point and Logan for a fixed number of allowances. In other words, the Department's proposal establishes a cap within the cap by fixing on a subset of sources, i.e., the Growth Reserve, within the overall cap and trade program. Rather, the Department should promulgate an allocation methodology that encourages the maximum use of cleaner facilities over existing facilities that do not achieve the same level of NO_x control. Facilities such as Carneys Point and Logan that are not currently being fully dispatched will be caught between new sources and older existing sources in this competition. As stated in the summary to the proposed rules, if "it happens that there are not enough allowances in the New Source/Growth Reserve... then allowance allocation will be prorated so that each claimant will receive a proportionally reduced number of allowances." In fact, N.J.A.C. 7:27-31.7(e)2iii provides a means for prorating the allocation to eligible sources from this reserve. In other words, the eligible new and growth sources may receive allocations that are less than their emissions. However, there is no provision for additional allowances to be made available for eligible sources from the overall budget. Essentially, allocations to other sources in the budget are protected from growth or new sources, and displacement of the older, high NO_x emitting capacity is not encouraged. The commenter suggests that allowances be taken from existing sources on a pro rata basis to provide sufficient allowances to cover growth and new source emissions to prevent this outcome. (3)

RESPONSE: The requirement to allocate allowances three years in advance for the control periods beginning in 2003 precipitated the change to the new source/growth reserve. In choosing the size of the reserve, the Department used the available information about new generation and growth of existing low-NO_x emitting sources. The Department attempted to size this reserve to accommodate the purpose of the reserve while not overestimating the size of the reserve, which would reduce the benefits of allocating the allowances three years in advance of the control period. The Department will continue to examine whether the size of the reserve is appropriate and will propose rulemaking to adjust the size of the reserve when warranted.

47. COMMENT: The commenter also seeks clarification of how the Department intends to implement the prorating provisions at N.J.A.C. 7:27-31.7(d)4iii and (e)2iii. It appears that existing sources eligible for growth reserves would be subject to two levels of prorated adjustment. In determining the allocation from the New Source/Growth Reserve, the Department will sum the preliminary allocations determined at (e)1i, related to new sources, and (e)1ii related to eligible budget sources pursuant to proposed N.J.A.C. 7:27-31.7(e)2i. If this sum is greater than the 820 allowances in the reserve, the Department will prorate the allocation to the source pursuant to N.J.A.C. 7:27-31.7(e)2iii.

We are concerned that the Department has prioritized new sources over existing clean sources. At N.J.A.C. 7:27-31.7(d)1, the Department indicates "the first purpose of this reserve is to hold aside allowances for new budget sources" and "the second purpose of this reserve is to hold aside allowances for budget sources that have low NO_x emissions rates." Does this mean that a hierarchy will be applied in the allocation from the New Source/Growth reserve? The summary states that the reserve "would be sufficient to accommodate up to 5,000 MW of new fossil fuel fired generation." How much growth will the reserve support? The commenter requests clarification of the meaning of the words "first" and "second" in N.J.A.C. 7:27-31.7(d)1 and that they do not mean that the Department has established a hierarchy placing new budget sources ahead of the eligible clean sources in the allocation process from these reserves. It is currently unclear, whether new budget sources" and existing eligible sources will receive prorated allocations from the New Source/Growth

Reserve, or whether new budget sources will in fact receive full allocations with existing low emitting sources receiving the remaining allowances in the reserve on a prorated basis. (3)

RESPONSE: As a matter of clarification, if prorating is necessary for the New Source/Growth Reserve, then it will occur once. Allocation to all eligible sources, new sources and eligible existing low-NO_x emitting sources will be prorated downward at the same rate. There is no hierarchy or one over the other. The reserve of 820 allowances must will shared equitably for both purposes.

48. COMMENT: The allocation from the New Source/Growth reserve is intended to supplement the base allocation for the eligible source. However, an eligible source is also subject to a potential prorated allocation of the base allowances pursuant to proposed N.J.A.C. 7:27-31.7(d)4iii reducing the eligible source's base allocation even further. It is unclear whether a clean source will be able to operate in compliance under this new regulatory scheme. The commenter requests that the rule be clarified to support the continued growth of existing clean sources consistent with the Department's goal to reduce NO_x emissions. (3)

RESPONSE: The implementation of the New Source/Growth Reserve is designed to support the growth of existing low-NO_x emitting sources. This reserve will allocate allowances to such sources so that they will not need to purchase as many allowances from the market if their emissions are greater than their allocation for a specific control period. However, this reserve does not guarentee that a low-NO_x emitting source will not ever need to purchase allowances. The fact that the reserves may be prorated downward does not preclude a source from obtaining allowances from the market in case such a scenario occurs.

49. COMMENT: Finally, the Department indicates the reserve allowances will be allocated after October 30 at N.J.A.C. 7:27-31.7(e)2. Essentially, New Jersey facilities will not know for certain if the purchase of allowances is required for compliance until well after facilities in other states. The uncertainty of the allocation system combined with the schedule for allocation places New Jersey facilities at an economic disadvantage with regards to the availability and cost of purchasing allowances. Thus, New Jersey facilities may be required to obtain allowances at a premium if any can be obtained. We recommend that the New Jersey rules associated with 'truing-up' accounts be made consistent with the other states in the 22 state OTC. This will allow fair and equitable access to the market, both from an availability and cost perspective, for all sources needing to utilize the market to assure compliance. (3)

RESPONSE: These rules are consistent with the requirements for "truing up" under the 22 State NO_x SIP Call Program. For the 2003 phase of the program, the Department is allocating allowances three years before each control period. This period of time gives all sources ample time to plan for compliance and participate in a robust allowance market. Each source is responsible for having enough allowances in its compliance account to authorize its emissions of NO_x by the same allowance transfer deadline (that is November 31 for the 2003 phase of the program) as all of the other states are required to implement if they participate in the regional Cap and Trade Program. The Department will allocate the 820 allowances of the New Source/Growth Reserve in an attempt to reduce the burden of low-NO_x emitting sources from purchasing as many allowances than if such a reserve did not exist. This reserve does not provide any guarantees that prorating will not occur and sources should plan for this such uncertainty.

50. COMMENT: The commenter is also concerned that the magnitude of the set-aside for the incentive reserve, comprising 5% of New Jersey's entire budget, could restrict the growth of in-state generation by restricting the availability of allowances. Any energy consumed within the state has to be generated somewhere, and if it is not generated within the state, then it will be generated elsewhere - probably in the Midwest, where, generally speaking, energy is cheaper but more polluting. Therefore, the size of the incentive reserve should be reduced, and these allowances should be made available to cleaner-burning facilities which experience increased operating levels.

It is not necessary for the Department to provide additional incentives to demand-side management programs and renewable energy initiatives through the NO_x Budget Rule, as such incentives already exist. The electric restructuring legislation has put in place significant incentives for demand-side management, and the Board of Public Utilities' generation portfolio standards provide an incentive for renewable energy. Therefore the allowances dedicated to the incentive reserve should be made available for the growth of cleaner-burning generation, especially generation operating at a rate equal to or better than 0.15 lb/MMBtu. To the extent any incentives for energy conservation or efficiency are granted through NO_x allocations, they should be granted for combined heat and power (i.e., cogeneration) operations. Such operations conserve energy by using the same energy to simultaneously produce electricity and useful thermal energy in the form of steam. (8)

RESPONSE: The NO_x Budget Program rule preceded the electric restructuring legislation. The incentives provided in this rule for energy efficiency and the generation of electricity from renewable resources continues to be important. If, in the future, the incentives provided by other programs for energy efficiency project, in the Department's view, warrant a change in the incentives provided in this rule, the Department would propose amendments to this rule to address the need for such a change.

51. COMMENT: Include a provision that the size of the set-aside will be increased as necessary so that all emission reductions from energy efficiency, renewable energy, and combined heat and power can be rewarded. Each year, when the allowances are set for the year 3 years hence, the set-aside for energy efficiency and renewable energy should be set at a level equal to the larger of: 15% of the total allowances, or the number allowances used to reward energy efficiency and renewable energy in the most recent 12 month period plus enough allowances to cover any shortfall in the number of allowances set aside for this purpose relative to the number needed to cover all requests. (These changes will preserve the benefits of the past "off the top" approach by continuing to make available as many allowances as are needed for rewarding emission reductions delivered by energy efficiency.)

The year by year allocation of allowances three years in advance as proposed will facilitate any necessary increases in the size of the set-aside for energy efficiency and renewable energy needed to reward all the energy efficiency and renewable energy actions that are reported to this program.

This approach provides the ability to provide the three year advanced notice on allowance allocations recommended in the EPA guidance and also provides the flexibility to increase the size of the set-aside for energy efficiency and renewable energy as necessary to cover the demand for allowances from this set-aside.

In crafting these rules for the NO_x budget program, the Department is deciding how it will give away nitrogen oxide emission allowances worth 0.9 to 2.4 billion dollars. Setting aside 15 percent of these emission allowances, and the wealth distribution it represents, to reward positive actions by all building owners and others that reduce pollution through energy efficiency and renewable energy

is very parsimonious. At the 15 percent minimum set-aside level for energy efficiency and renewable energy, the Department is still choosing to give 85 percent of the emission allowances, and the wealth distribution it represents, to pollution emitters. Giving 85 percent of this wealth distribution to polluters can be seen as softening the blow of the cost of emission reduction for polluters, but it is also in fact a subsidy for polluting the public's air.

If emitters had to buy all the allowances they need to cover their emissions each year in the competitive marketplace at market prices, they would have a substantially greater incentive to reduce their emissions. Moving 15 percent or more of the allowances into the competitive marketplace by giving them to implementers of energy efficiency and renewable energy projects, who can capture their value by reselling these allowances in the marketplace, amounts to a gradual way of beginning to wean emitters away from the public subsidies they currently receive in the form of gifts of valuable emission allowances in return for polluting the public's air. (1)

RESPONSE: At this time, the Department believes a 15 percent Incentive Reserve is not needed. The five percent set-aside that these amendments establish would make 410 tons available to be allocated as incentive allowances beginning for the year 2003. For the 1999 ozone season, there were only 67 tons of claims for incentive allowances. Furthermore, on February 9, 1999, New Jersey enacted the Electric Discount and Energy Competition Act. This Act provides for new funding to encourage the development of energy efficiency, including combined heat and power, and renewable energy. With these new incentives coming into place, the need to provide incentive through the NOx Budget Program is diminished.

52. COMMENT: If there are not enough allowances in the incentive reserve to meet all eligible claims, do not prorate rewards. Instead, provide full rewards on a first come first served basis from the allowances available in the set-aside for the current year. When these are used up, use allowances from the set-aside for the subsequent year. With the mechanism described in the previous comment for increasing the set-aside so it can cover all eligible claims and any backlog of shortfalls for covering eligible claims, the system will be self-adjusting so it will be possible to give all eligible claims their full reward soon after they have been filed. (1)

RESPONSE: The recommendations of this commenter would add administrative complexity to the process of allocating incentive allowance. A system would need to be established to determine which applications were received ahead of others, and how "ties" should be broken. This could lead to resource-intensive administrative appeals proceedings. Furthermore, this commenter would allow the carrying over of claims into future years. In the rule's simpler approach all claims would be addressed within a single year. In the Department's view, the advantages of the commenter's proposed system do not outweigh the disadvantages of this additional administrative burden.

53. COMMENT: Specifically recognize combined heat and power as a qualifying form of energy efficiency. This is an important type of energy efficiency and it should not be left out. (1)

RESPONSE: The Department incorporated recognition of the value of combined heat and power within the NOx Budget Program through its procedures to allocate allowances to budget sources based on net output. The Department believes that this allocation mechanism is the appropriate means for acknowledging the value of combined heat and power within the NOx Budget Program. However, New Jersey will be providing other incentives for combined heat and power through the

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funding for energy efficiency and renewable energy provided for under the Electric Discount and Energy Competition Act, enacted on February 9, 1999.

54. COMMENT: Reward the emission reductions delivered by energy efficiency and renewable energy over the entire effective life of the efficiency or renewable energy measure.

It is important to remember that the rewards for energy efficiency and renewable energy emissions concern using some of the wealth distribution, that is inherent in the distribution of free emission allowances, to reward emission reductions from energy efficiency and renewable energy. Setting the emissions cap and the requirement that emitters acquire enough allowances to cover their annual emissions achieves the primary environmental emission reduction goal. Giving away (frequently called allocating) the emission allowances is a wealth distribution, pure and simple.

Being stingy about how the allowances are used to reward energy efficiency and renewable energy does not increase emission reduction or increase environmental protection, it simply distributes more wealth to the polluters and increases the public subsidy of emitters' pollution. Since the amount of emission reduction delivered by the energy efficiency and renewable energy have been chosen as the determining factor in sizing rewards for their actions, the program should reward the emission reductions these measures deliver over their useful lives, and the program should not arbitrarily limit the lifetimes to something less than the measures' useful lives. In short, the rewards for emission reductions from energy efficiency and renewable energy measures should not be limited to 5 years, rather the rewards should be provided for all the emission reductions over the full lifetimes of these measures. (1)

RESPONSE: These rules do not limit the number of years that an eligible project may claim incentive allowances. For example, as the rules current stand, a landfill gas to energy project may claim incentive allowances as long as it generates electricity from the landfill gas.

55. COMMENT: Reward early actions by rewarding all emission reductions delivered by energy efficiency and renewable energy projects implemented 1990 or later.

The vast majority of all building owners and others that have reduced emissions by implementing energy efficiency and renewable energy projects have been left out of the wealth distributions created by past emission reduction programs for NO_x and other pollutants. Past emission reduction programs have given all of the wealth, in the form of allowances, to the emitters. It is time for the New Jersey Department of Environmental Protection to make amends by using the wealth distribution it is currently creating to reward emission reductions from all energy efficiency and renewable energy projects implemented in 1990 or later that have not yet been rewarded with allowances in the NO_x reduction program. Since no new allowances are being created, this action is only about choosing the recipients of the wealth distribution, and is 100 percent compatible with achieving the NO_x reduction goals. (1)

RESPONSE: This issue was addressed in the previous rulemaking effort. During that effort, the decision was made to grant access to incentive allowances to energy efficiency and certain renewable energy projects that commence operation in 1992 or thereafter (rather than in 1990 or thereafter).

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56. COMMENT: Establish a multiple pollutant emission reduction reporting system that provides "one stop" reporting of reductions of sulfur dioxide, nitrogen oxides, particulate matter, mercury, greenhouse gases, and other pollutants. Commit to using this one-stop reporting system, incorporating improvements as needed, for all future emission reduction programs. Make this multiple pollutant emission reduction reporting system compatible with reporting under DOE EIA 1605(b) using extensions for multi-pollutant reporting as described in "Multiple Pollutant Emission Reduction Reporting System" by the commenter.

Establishing "one-stop" reporting and making the reporting system consistent for all pollutants, makes it easy for owners and implementers of energy efficiency, renewable energy, combined heat and power, and sequestration projects to get credit for all emission reduction benefits they deliver. (1)

RESPONSE: This is a good concept that goes beyond the purview this rulemaking. The Department will consider such a concept for the future.

57. COMMENT: If the requests for rewards for emission reductions delivered by energy efficiency and renewable energy do not use up all the emission allowances in the efficiency and renewable energy set-aside each year, use the remainder to reward emission reductions delivered by the cleanest electric generation and cleanest non-electricity generation units in the state.

First, divide any remaining allowances into those that will be used to reward the cleanest electric generation, and those that will be used to reward the cleanest non-electricity generation units, according to the ratio of the overall allocations of allowances to these two groups of emitters for the year. Second, identify and rank the cleanest kilowatt-hours (kWhs) generated in the state during the previous year on an emissions per kWh basis. Then reward the cleanest kWh first and continue rewarding each kWh down the ranking until the available allowances in the electric generation's share of the unused portion of the efficiency and renewable energy set-aside for the year are exhausted. Third, identify and rank the cleanest energy produced by non-electric generators in the state during the previous year on an emissions per kWh per Btu delivered basis. Then reward the cleanest Btus first and continue rewarding each Btu down the ranking until the available allowances in the non-electric generation's share of the unused portion of the efficiency and renewable energy set-aside for the year are exhausted.

This lets the entire energy efficiency and renewable energy set-aside be used to reward and create increased incentives for emission reductions, even if emission reductions from energy efficiency and renewable energy do not use up the entire set-aside each year. It also creates ongoing competition to encourage cleaner electric generation and nonelectric generation. (1)

RESPONSE: This is an interesting suggestion goes beyond the purview this rulemaking. The Department will consider such a concept for the future.

58. COMMENT: The proposed rules have potential deleterious impacts upon cleaner-burning facilities that are compounded by the uncertainty of the future deregulated electricity market. The commenter is concerned that the approach selected by the Department will increase the risk to and jeopardize the viability of Carneys Point and Logan in a deregulated market. The future capacity of these units is unknown and subject to significant change. The baseline allocation used for post 1990 sources was the average of two "representative" operating years. Prior to the passage of de-regulation, the operating scenarios under regulation were more predictable than we expect in the

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deregulated market. We submit that there is no representative operating information, as that term is used in the regulations, on which to base allocations for a deregulated market.

In the current rule, a complicated forward allocation methodology establishes the number of annual allowances in each account using the immediately previous control period's operating data. Although this is complicated, it is a tolerable system because the operating conditions of the period used to calculate the allocations was not likely to differ significantly from the previous periods. In other words, the allocation is close to "real time" allocation and allows for changes in operating conditions in response to changing market conditions. The proposed rule retains the forward allocation methodology; however, in order to respond to EPA's allowance allocation timing requirement, the Department proposes to use operating data from the years 1996, 1997, and 1998 for determination of the 2003 allocation. Looking specifically at Carneys Point and Logan, the facilities became commercially available in 1994 and produce electricity for Conectiv (successor to Atlantic Electric) under the terms of a Power Sales Agreement that is currently still in effect. Carneys Point and Logan operated under the terms of this agreement and the operating data from the 1996 through 1998 reflect the operation under these conditions. In preparation for deregulation, utilities are evaluating whether to buy out these power sales agreements and, if they do, we fully expect that the dispatch of the plant will be dependent upon the market and not be set by the utility purchasing the plant's output under a contract negotiated in a prior regulated environment. Under a deregulated market, our business objective is to be the electric generator of choice. As such, this will lead to increased demand for our generation and thus, the need for additional NO_x allocations.

To reiterate, our concern is with a forward allocation methodology, operating data from 1996-1998 may not truly be representative in a deregulated market and will not assure us of sufficient allocations to cover increased generation. Consequently, the Department's proposal is deficient in that operating data that is potentially outdated will be used to calculate the allocation that will govern our ability to operate in 2003 and beyond.

Further, the forward allocation methodology provides for no incentive to operate at a lower emission because such operation will ultimately affect future allocations. Given the market uncertainty, facilities like Carneys Point and Logan must ensure future operating capability by operating as close to allowable levels as possible now in order to secure sufficient allocations for the future. The allocation methodology creates a similar disincentive for banking allowances. If the facility over-controls NO_x in order to minimize the use of the current allowances and thereby creates bankable allowances, it ultimately receives fewer future allocations. Thus, the prudent option is to operate near the allowable emission rate and plan to purchase additional allowances. However, if a great number of sources chose to operate in this fashion, there will be limited banked allowances to purchase. In this scenario, there is a strong possibility of an allowance shortfall at the end of the reconciliation period. Conversely, if a great number of allowances are banked, there is a strong likely hood that the banked allowances will be devalued as a result of "timing of the calculation of the progressive flow control provision" of the federal rules at N.J.A.C. 7:27-31.11. Thus, there is a great deal of uncertainty and limited options for future business planning.

Given the above, the commenter requests that the Department reconsider its allocation methodology for existing clean sources (permitted at 0.15 lb/MMBtu or below). Allocations should be consistent with those for a new source, that is, allocation calculated from the permitted level and actual operation for the control period until enough historical data is available to determine an accurate budget allocation. (3)

RESPONSE: The allowance allocation provisions of this rule provide allowances to low-NO_x emitting existing sources based on the latest actual emissions information plus an extra amount based on the half the difference between the sources actual emission rate and the lower of its permitted allowance emission rate or 0.15 lb/MMBtu. Low-NO_x emitting sources are also eligible to receive allowances from the growth reserve up to an amount equal to the difference between the number of tons of control period NO_x emissions and the amount of allowances originally allocated to that source for the control period. Both of these aspects of the allocation methodology provide incentives for low-NO_x emitting sources to lower their emission rate further and to operate more than during the time period used to allocate allowances. It would be unreasonable for the Department to set-aside the sum of the potential emissions of NO_x from all existing budget source that emit NO_x at a rate less than or equal to 0.15 lb/MMBtu. Using the 1996 through 1998 data, this amount would be 9,803 allowances, over 3.5 times what these sources actually emitted in 1998 and more than the 2003 budget figure. Even using actual emission rates and allowable fuel use data, the amount of such a set-aside would be 6,647 allowances.

59. COMMENT: The Department should include a provision that clearly indicates when allocations will be submitted to the Administrator, for example: "By April 1, 2001 and April 1 of each year thereafter, the Department will submit to the Administrator the NO_x allowance allocations for the control period in the year that is three years after the year of the applicable deadline for submission under this section." (9)

(*) RESPONSE: The Department has amended the provisions at N.J.A.C. 7:27-31.7(d), (e) and (l) by clarifying that the allowance allocation entails sending allocation information to the NATS Administrator.

60. COMMENT: The Department should include a provision to address 40 CFR 96.41(c) or clarify where Sub 31 requires the Department to submit remaining allowances from set-aside accounts for the prior control periods. (9)

RESPONSE: The rules at N.J.A.C. 7:27-31.7(e) specify how and when allowances in the reserves are allocated. First, the allowances in the New Source/Growth Reserve and the Incentive Reserve first are allocated to the activities for which these reserves are established. Second, If there are any allowances leftover in either of these reserves, they would be allocated for the purpose of the other reserve. For example, if allowances remain in the incentive reserve and if the supply of the New Source Growth reserve did not meet the demand, then the allowances in the Incentive Reserve would be allocated to meet the unrealized demand on the New Source Growth Reserve. Third, if the allocation to budget sources were prorated downward, any remaining allowances would be allocated to make-up for the amounts that were prorated downward. Lastly, if there are any allowances remaining in either reserve after the first three steps, such allowances would remain in the reserve and would be available for allocation in the next year.

In this respect, the Department's rules differ from EPA's model rule at 40 CFR 96.41(c). The EPA model would allocate all allowances in the reserve by April 1 of the year following the control period for which the allowances could first be used. Although it is most unlikely that any allowances would remain in the reserves after the Department's allocation process, there is a possibility that allowances may remain. If such a case occurs, the allowances would not be allocated by April 1 of the following year, but would be rolled into the allocation of the reserves in the following year. The

Department believes that this issue is one of allocation discretion and not an issue hinged upon the allocation timing requirements as discussed in the final NO_x SIP Call (63 FR 57467 - 57469).

61. COMMENT: Section 31.7(j) proposes that "the Department shall not allocate any allowances to a budget source that is no longer in operation at the time that allowances are being allocated. The proposed rule does not specifically address the allowances allocated to a unit that shuts down permanently in between the time it is allocated the allowances and the control period for which the allowances are allocated. However it is stated in the summary section of the proposal that "the owner or operator of a source that has ceased operating after receiving allowances for a specified control period would not be required to return the allowances for the control periods for which they do not operate."

The commenter strongly suggests that the Department include language in the rule that requires sources that shut down following the receipt of allowances for control periods in which the unit will be permanently removed from service, to return the allowances allocated to the Department for use in meeting the compliance needs of New Jerseys operating units. These allowances should be added to the new source/growth reserve provided for in section 31.7(d)1. to encourage the development and operation of low emission rate sources. Based on 31.7(e)4ii and 31.7(e)4iii any excess in the new source/ growth and incentive reserves would then be allocated to all other operating sources in proportion to each sources respective need. (4)

RESPONSE: The Department is unable to incorporate this suggestion into the adoption of these amendments. The rationale the Department used in the proposal and in the adoption regarding this issue is not to require the return of allowances after they are allocated unless they were allocated in error. The reason for this is after the Department allocates an allowances, it is able to be traded freely. The Department does not wish to interfere with the free trade of allowances once they are properly allocated.

62. COMMENT: The commenter requests that the Department clarify the way that the Year 2003 allowances, which are summarized in the table at N.J.A.C. 7:27-31.7(l), were determined. This clarification is necessary as there are differences compared to what has been allocated for the 1999 season for which the basis for the allowances should be the same (i.e., activities of each source from the years 1996, 1997 and 1998). (7)

N.J.A.C. 7:27-31.7(l) states that allowances for the 2003 control period be allocated by September 30, 1999, in accordance with a table in that subsection. In a document issued by the Department obtained at its website, it is stated that the Department relied on 1996, 1997 and 1998 data to establish the 2003 allocations. Since the 1996, 1997 and 1998 data was used to establish the allocations for 1999 it is expected that the 2003 allowances would equal those allocated for 1999. Review of the table in section 31.7(l) indicates that the allowances calculated for 2003 are slightly less. What is the reason for this? The reduction or difference between 1999 allowances and 2003 is not equally proportional to all units in the table and for some units there is no change. What is the reason for this? (4)

RESPONSE: The basis for the allocation of the year 2003 allowances as listed at N.J.A.C. 7:27-31.7(l) is the same procedure specified at N.J.A.C. 7:27-31.7(d)3. The operational data used for this allocation procedure is 1996 through 1998 data, which was also used in the 1999 allocation calculation procedure. However, there are two major differences between the calculation

This adoption has been filed with the Office of Administrative Law, which will edit it before publishing it in the New Jersey Register. Please refer to the August 21, 2000, New Jersey Register for the official text of the adoption.

mechanisms for 1999 and 2003 allocation. The first difference is that a base allocation rate of 0.20 lb/MMBtu is used for process heaters for the year 2003 allocation rather than 0.15 lb/MMBtu. The second difference is that the allocations for 2003 needed to be prorated downward from 7,092 allowances to 6,970 allowances, which is the number available for allocation after setting aside New Source/Growth Reserve and the Incentive Reserve. In prorating downward, the total amount of allowances to be allocated was prorated downward by about one fifty-eighth. An allowance cannot be divided into smaller units. So, the way the rounding worked out, any account having a preliminary allocation amount of 27 or more allowances was prorated downward by one or more allowances. Also, in order to have the number of prorated allowances equal 6,970, the Department needed to round fractions of allowances up or down based on whether the fraction was less than 0.5527354765935, rather than whether the fraction was less than 0.5.

63. COMMENT: The table at N.J.A.C. 7:27-31.7(l) incorrectly refers to U.S. Generating Company as the company for each of the Cameys Point and Logan Generating Plants. The correct company names associated with these plants are the owner partnership names; Chamber Cogeneration, L. P. and Logan Generating Company, L. P., respectively. As a point of information, on June 1, 1999, the U.S. Generating Company was renamed PG&E Generating Company to better reflect our affiliation with PG&E Corp. Please correct the table to reflect the following information:

NATS UNIT ACCOUNT	COMPANY	PLANT
10043001001	Logan Generating Company, L.P.	Logan Generating Plant
10566001001	Chambers Cogeneration L.P.	Carneys Point Plant
10566002001	Chambers Cogeneration L.P.	Carneys Point Plant

(3)

RESPONSE: The Department has corrected the table accordingly.

64. COMMENT: The Department should monitor increases in operating levels at dispatchable cleaner-burning facilities during the ozone season for the years 1999-2002. This will help the Department to anticipate whether the new source / growth reserve will be adequately sized to meet the needs of New Jersey's cleaner-burning facilities. If, for example, by 2001, it appears that because of increased utilization, dispatchable cleaner-burning facilities will not receive adequate allowances to operate from their base allocations in 2004, then the size of the new source / growth reserve for that year should be increased commensurately. The compliance supplement pool can be used to aid cleaner-burning dispatchable facilities for 2003 and 2004, but for later years, on an ongoing basis, the Department should be sure to monitor and adjust the size of the new source / growth reserve to assure that cleaner-burning dispatchable facilities are not left with allowance shortfalls because of the time lag between the three-year rolling average period and its effect on allocations. It would be unfair to base the allocations of allowances to cleaner facilities several years in the future on data that is already in the past. (8)

RESPONSE: The Department will monitor the allocation of allowances and the operation and emissions of the population of budget sources and emissions. The Department will study this information to assure that the principles by which the allowance allocation provisions are not compromised by unforseen events. If future evidence indicates that changes to the rules are

necessary to avoid allocation of allowances contrary to the principles by which the rules were designed, the Department will amend such rules as soon as possible.

N.J.A.C. 7:27-31.9 Permits

65. COMMENT: The Department needs to ensure that the permit deadlines included in N.J.A.C. 7:27-22 meet 40 CFR part 96 criteria.
(a)1. Please see comments on 7:27-31.2 for "excess emissions."
(a)2. Please see comments on 7:27-31.2 for "authorized account representative." (9)

RESPONSE: The Department believes that the permit deadlines included in N.J.A.C. 7:27-22 meet the criteria of 40 CFR 96.

66. COMMENT: Existing 31.9(f) contains a general requirement that any changes made to a budget source be reflected in the operating permit and the compliance plan. This might apply to a NO_x Budget unit that is permanently retired, but it's uncertain if the Department's operating permit rules address the requirements of 40 CFR 96.5. The Department should incorporate the provisions of 40 CFR 96.5 into N.J.A.C. 7:27-31. (9)

RESPONSE: This general requirement pertains to any change to the budget source, not just a retirement of a budget source. The Department's rules that substantially address 40 CFR 96.5 are contained at N.J.A.C. 7:27-31.16(e).

67. COMMENT: The Department should clarify if Subchapter 22 or 31 indicate what is the effective date of a NO_x Budget permit according to the provisions of 40 CFR 96.24. (9)

RESPONSE: The Department is not administering the NO_x Budget Program through an additional formal permit process. By the year 2003, the NO_x Budget Program will be well established, and existing sources will have been participating in the Program for about 4 years. As new sources become applicable to the NO_x Budget Program, the requirements of the program, including installation of monitoring systems and reporting of monitored data to the NETS, will be reinforced through the Department's normal permitting process. Because the Department is using a different formal mechanism to implement the requirements of the NO_x Budget Program, the language of 40 CFR 96.24 suggested in this comment is not relevant.

68. COMMENT: Existing N.J.A.C. 7:27-31.9(d) discusses the submittal requirements for the permit. The Department should revise this section to clarify what if a source commenced operation prior to and after January 1, 2000. (9)

RESPONSE: N.J.A.C. 7:27-31.9 and N.J.A.C. 7:27-22 already require the operating permit of a budget source to incorporate the requirements of the NO_x Budget Program through the submission of an operating permit application. These rules require such incorporation at the time of application, if an initial operating permit application had not been submitted by August 16,1998. These rules also require such incorporation within 90 days of approval of a monitoring plan, if an initial operating permit application had not been submitted by August 16, 1998. The same requirements would hold true for a source that commences operation either before or after January 1, 2000.

69. COMMENT: The Department should include the requirements of 40 CFR 96.22 into N.J.A.C. 7:27-31.9. (9)

RESPONSE: The Department is not administering a separate permit process for the requirements of the NO_x Budget Program. The requirements for the owner or operator of a budget source to identify each budget source at a facility is already required under the current rules at N.J.A.C. 7:27-31.13(g)-(i) and, therefore, the provisions of 40 CFR 96.22 are not necessary.

N.J.A.C. 7:27-31.10 Allowance use, transfer and retirement

70. COMMENT: At N.J.A.C. 7:27-31.10(i), all of the information regarding allowance use, transfer and retirement is available on EPA's website. The NATS Administrator will not provide additional notification of the transfer to the environmental agency serving the other jurisdiction as provided in the Department's rule. The provision should therefore be removed. (9)

RESPONSE: The Department accepts that posting of this information on EPA's website as adequate notification to the environmental agency of a state. Therefore, the current actions of the administrator of the NATS satisfy this provision. No change to the rule language is needed.

71. COMMENT: At N.J.A.C. 7:27-31.10(k), New Jersey sources may trade with sources from other States included in the EPA administered NO_x Budget Trading Program. The rule should state clearly that EPA will determine which States are included in this program, not the Department. Requiring the Department to determine which State rules are acceptable may result in inconsistencies with 40 CFR 51.121. For instance, if EPA determines that a State program is not acceptable but the Department determines that it is, the Department's rule would allow trading between sources in the two States. This would be inconsistent with 40 CFR 51.121 and could result in New Jersey sources holding allowances that are not eligible to be used for compliance. The Department should amend this paragraph to read as follows:

> (k)...consistent with this subchapter or consistent with the NO_x Budget Trading Program as determined by USEPA. (9)

(*) RESPONSE: The Department agrees that USEPA's determination of the adequacy of State's NO_x Budget Program is necessary for the proper functioning of the regional program that will be administered by USEPA under the authority of each State's regulations. It is for this reason that Department is amending the provision at N.J.A.C. 7:27-31.10(k) to include the determination of adequacy by UESPA. However, this program is established through the regulations of each state and the Department must retain at least partial authority under its own regulations to determine the adequacy of allowances that originate from another jurisdiction because those allowances may authorize emissions within the State of New Jersey. It is for these reasons that the Department has amended this provision so that both the Department and USEPA are involved in the determination of adequacy of a another State's NO_x Budget Program.

72. COMMENT: At N.J.A.C. 7:27-31.10(l), a request to retire an allowance is simply a special type of transfer request, that is, a request to transfer to a retirement account. For example, a transfer form should be used for a retirement request. The rule should state, "... shall submit to the NATS Administrator a retirement request, i.e., a request to transfer the allowance to a retirement account..."(9)

(*) RESPONSE: The Department agrees that the suggested language better guides the holder of an acocunt as to how to reitre an allowance. Therefore, the Department has amended this provisions accordingly upon adoption.

N.J.A.C. 7:27-31.11 Allowance banking

73. COMMENT: An additional area of concern is "Progressive Flow Control." Genco opposes these provisions in the regulation because this level of conservatism is unnecessary. The NO_x budgets under the NO_x SIP Call are so small that the budgets themselves will limit inter-temporal trading. Progressive flow control could constrain inter-company trading and cause higher prices for allowances. This could occur because the more allowances maintained in a "bank," the greater the number of banked allowances from that bank which can be used at 1:1 ratio. Consequently, a facility may not want to trade away any allowances. The potential use of some allowances at a 2:1 ratio further restricts the market. Under these provisions, it is unlikely a facility will reach a "comfort level" relative to the number of allowances in their bank. Finally, the proposal inappropriately reduces the number of useable allowances in small banks when the 2:1 ratio requirement will be triggered by the number of allowances in large banks. (2)

RESPONSE: The Department did not propose any changes to the progressive flow control provisions in this rule. However, in response to this comment, the progressive flow provisions are designed to allow unrestricted use of banked allowances. If there are a lot of banked allowances in the region (more than 10% of the region-wide budget), then the two-for-one ratio is only applied to some certain allowances and only upon use. Regarding the commenter's claim that these provisions would constrain trading, under a progressive flow control scenario, banked allowances would be very valuable for those companies that need to use them. Such companies would likely want to have a lot of banked allowances on hand to avoid using banked allowances on a two-for-one ratio. This would tend to encourage the interstate trading of allowances. Companies that own banked allowances that do not plan on using them would likely see a good market to be able to sell them. The progressive flow control provisions provide for unencumbered use of banked allowances up to 10% of the regionwide budget. This is designed to prevent large spikes of banked allowance use in a single year, which could have serious adverse affects on ambient air quality. This is currently thought to be an appropriate level of protection for the environment while allowing the flexibility of inter-temporal trading of allowances.

74. COMMENT: At N.J.A.C. 7:27-31.11(c)1, while the phrase "regional base emission budget for the current year" is accurate for the OTC NO_x trading program, it needs to be amended to reflect the NO_x Budget Trading Program that may include non-OTC States. This language needs to be changed to refer to "The sum of all state emissions budgets."(9)

RESPONSE: In response to comment #9, the Department amended the definition of "base emission budget" to refer to the multistate program in general, and not the Ozone Transport Region. Therefore, no addiotnal amendments at this provision are needed in order to account for the emission budget from all the states participating in the NO_x Budget Program.

N.J.A.C. 7:27-31.12 Early reductions

75. COMMENT: PG& E Gen respectfully requests that the Department omit from the final rulemaking the proposed changes at N.J.A.C. 7:27-31.12(e)1i and ii and avoid a retroactive rulemaking or else clarify that the proposed rule does not apply to pending, as well as approved applications. The commenter believes that the proposed modifications to the ERC rule make a significant substantive change to the rule, cannot be applied retroactively and confirms the validity of the Carneys Point and Logan applications for Early Reduction Allowances.

Under the existing rules, "baseline emission rate" is defined as a source's actual 1990 NO_x baseline emission rate." However, "if a source did not commence operation until 1990," the baseline emission rate is "the lowest allowable NO_x emission rate of the source for the period May 1 through September 30 of the year for which early reductions are being calculated." (N.J.A.C. 7:27-31.12(e)li through iii) Using these calculations, Carneys Point and Logan qualify for early reduction allowances. The proposed rule requires that post 1990 sources utilize the actual average emission rate when determining their baseline emission rate. Specifically, the Department proposes to add a clause at the end of N.J.A.C. 7:27-31.12(e)1ii stating that post-1990 sources must calculate the baseline emission rate using the "average actual emission rate" during a prior year or two years rather than lowest allowable emission rate "during the [appropriate] May 1 through September 30 periods." If the baseline emission rates are required to be recalculated, the plants may not qualify for any early reduction allowances, thus the nature of the change is substantive.

In the summary of the proposed rule, the Department states that the omission of the clause "average actual emission rate" from the existing rule was the result of "inadvertence." Despite the Department's characterization of its amendment as one to correct a mistake, there was no inadvertent mistake made. The criteria were proposed in the New Jersey Register with full opportunity for review and comment by the regulatory community, by the signatories to the Ozone Transport Commission (OTC) Memorandum of Understanding (MOU) and by the federal Environmental Protection Agency as well as full opportunity for the Department itself to review and revise the rule as needed. Comments were addressed and revisions were made, with no change to the criteria for determining the baseline emission rate, and the regulation was properly promulgated. On that basis, fundamental principles of due process require that the rule' be applied as written for timely applications. The existing laws and regulations to establish the rules of the game should be relied on. When stating in the summary of the rule that the proposed modification "does not affect the early reduction applications [previously] approved by the Department," the Department supports the principles of due process. However, it should be noted that there is no practical difference between those applications previously approved and those that should have been approved under the then applicable rules.

After the deadline for filing the early reduction allowance applications had passed, the Department denied the Carneys Point and Logan applications utilizing an "actual" emissions criterion for the baseline emission rate for post 1990 facilities which is not present in the rules. The facilities have appealed the decisions. With the appeal pending and several months after the deadline for filing applications, the Department has proposed to amend the rule to correct an "inadvertent" omission. Given the facts, the amendment appears to be not so much "curative" as an after the fact change in the rules. The commenter believes the proposed changes to the early reduction allowance section cannot be applied to existing applications or appeals and so cannot be used in the current Carneys Point and Logan proceedings.

In the rule summary the Department states that the proposed rule "does not affect the early reduction applications approved by the Department" (emphasis added). As stated above, the commenter

believes that the Department cannot apply the changes retroactively and thus, the proposed rule does not affect approved or pending applications.

The commenter respectfully requests that the Department omit from the final rulemaking the proposed changes at N.J.A.C. 7:27-31.12(e)1 because the deadline for submission of applications under this rule is long passed. (3)

The Department proposes to "clarify" language regarding the 1997-1998 Early Reduction provisions. However, this action has no prospective purpose. The deadline for filing applications for Early Reduction Credits has passed and there is no opportunity for affected facilities to alter the applications to meet the revised standard. Essentially the "clarification" of this rule is an after-the-fact change to the rules that will alter the outcome of the game. We request that the Department withdraw the proposed changes to N.J.A.C. 7:27-31.12. Allowing the early reduction provision to remain unchanged is a demonstration of good faith by the Department. (8)

RESPONSE: The Department is adopting the provisions at N.J.A.C. 7:27-31.12 as proposed. The Department addressed many of the points raised in this comment in the summary of the proposal. For example, the Department advised the point that no new applications could be submitted under the provisions of this section. The provisions being adopted herein correct an oversight in the regulatory language. There was no intention under the Model Rule or by the Department to grant Early Reduction Allowances to facilities that do not implement measures to reduce their emission rate below actual levels. Although the Department commends PG&E Generating for installing and operating Selective Catalytic Reduction (SCR) control technology on new coal fired units, achieving actual emission rates of less than 0.15 lb/MMBtu, the Department has a responsibility to the public to prevent the creation of early reduction allowances that are not real, quantifiable, and surplus. This is consistent with the requirements of USEPA and the practice of other OTC States. The early reduction applications for Carneys Point and Logan fail to meet requirements for real reductions in actual emissions and are not surplus because they involve emissions which result from new source review requirement, rather than voluntary efforts to reduce emissions.

N.J.A.C. 7:27-31.13 NO_x Allowance Tracking System (NATS)

76. COMMENT: The Department's rule should include overdraft accounts. EPA included overdraft accounts in the NO_x Budget Trading Program based on experience with the Acid Rain Program, where EPA revised the regulations to reduce the possibility of plants being penalized for excess emissions due to inadvertent errors, e.g., in distributing allowances among the compliance account of boilers at the same plant. The absence of overdraft accounts increases the possibility that such inadvertent errors will result in excess emissions. The Department should use the language in 40 CFR 96.51(a) and 96.54(b) on the structure and function of overdraft accounts. (9)

RESPONSE: The Department has considered the use of overdraft accounts in the past. The Department believes that the companies must comply with the program on a source specific basis and are expected to manage allowances in a manner that would achieve compliance on a source-by-source basis, without the use of "overdraft accounts." Although the Department recognizes that the use of an overdraft account could add some flexibility for facilities that operate more than one budget source and that the USEPA has already established procedures for use of allowances from overdraft accounts, the Department continues to have some issues regarding the case where an overdraft account is exhausted before all NO_x emissions from budget sources are properly accounted

for during the reconciliation process. In this case, non-compliance is arbitrarily assigned by the procedures programmed into the reconciliation process for the use allowances from overdraft accounts. Without the use of overdraft accounts, the AAR is responsible for assigning the allowances among the NO_x budget units under the AAR's control. In the case where there are not enough allowances at a facility to properly authorize the emissions of NO_x, the Department expects the AAR to make the decision about which of its sources are not in compliance with the requirements of the program rather than have the automated procedures of the reconciliation process make that decision for the AAR. This expectation is reasonable. Because the penalty associated with compliance is directly related to this decision, having the automated procedures of the reconciliation process determine the initial penalty amount could be challenged if the AAR would have assigned non-compliance among its sources in another manner. The Department's concerns about the arbitrariness of assigning non-compliance from overdraft accounts outweighs the potential convenience to budget units and the consistency with the procedures to be used for sources in other states participating in this program.

77. COMMENT: At N.J.A.C. 7:27-31.13(e), the NO_x Budget Trading Program may include States beyond the OTC. This subsection needs to reflect this. Additionally, the Department should authorize the EPA Administrator rather than the USEPA Clean Air Markets Division, formerly the Acid Rain Division, as the Administrator of the NATS (and NETS). (9)

(*) RESPONSE: The Department has amended this subsection by moving the first sentence into the definition of "NATS Administatrator" at N.J.A.C. 7:27-31.2 and by adding the modifier "for the purposes of the OTC NO_x Budget Program during the years 1999 through 2002." The Department is also adding the sentences, "The Administrator of USEPA , or its designee, is the NATS Administrator for the purposes of the NO_x Budget Programpursuant to 40 CFR 51 and 40 CFR 96 during the years 2003 and beyond. As of September 29, 2000, the USEPA Clean Air Markets Division, formerly the Acid Rain Division, has been designated by USEPA to be the NATS Administrator." These sentences clarify who the NATS administrator is in a manner consistant with the desgination of such under 40 CFR 96 (which specifies the USEPA Administrator as the NATS Administrator). These sentences also do not limit the scope of the program to the OTC for the years 2003 and beyond, yet still accurately declare the NATS Administrator purusnat to the OTC NO_x Budget Program. The Department is also making similar changes to the definition of "NETS Administrator" at N.J.A.C. 7:27-31.2.

78. COMMENT: At N.J.A.C. 7:27-31.13(i), since this provision applies only to compliance accounts, the phrase, "If the account is for a specific budget source" should be removed throughout (i)(2) and the reference to a general account in (i)(2)(iv) should be removed. (9)

(*) RESPONSE: The Department agrees that since this subsection only refers to the establishment of a compliance account, then the qualiifer "If the account is a compliance account" used in the paragraphs of subsection (i) are not necessary. The Department has removed the unnecessary phrases upon adoption. As noted in the agency-initiated changes, subsection (i) is recodefied at (m) upon adoption.

79. COMMENT: The Department needs to add provisions that address, for the General Account Information Form, the information and certification to be provided (see 40 CFR 96.51(b)(1)) and the effect of receipt of the form by the NATS Administrator (see 40 CFR 96.51(b)(2)). (9)

(*) RESPONSE: The current rules at N.J.A.C. 7:27-31.13(d) pertain to the establishment of a general account for an individual who "completes and submits a General Account Information form to the NATS Administrator." However, the language at 40 CFR 96.51(b)(1)-(2) does clarify what is entailed in this procedures. Therefore, the Department has added this language (with some terminology and citations specific to the Department's rules) upon adoption at N.J.A.C. 7:27-31.13(p)1-2. As noted in the agency-initiated changes, subsection (d) is recodefied at (p) upon adoption.

80. COMMENT: At N.J.A.C. 7:27-31.13(i)2iv, the Department needs to add provisions requiring updating of the list of persons with an ownership interest for a general account. (9)

(*) RESPONSE: As mentioned in comment #78, N.J.A.C. 7:27-31.13(i) only applies to compliance accounts, so the phrase referencing general accounts is out of place. The Department is removing this phrase upon adoption and is adding provisions modeled from 40 CFR 96.51(b)4 at N.J.A.C. 7:27-31.13(p)3 in order to clarify the procedures regarding change of ownership of a general account. As noted in the agency-initiated changes, subsection (d) is recodefied at (p) upon adoption.

81. COMMENT: At N.J.A.C. 7:27-31.13(i)5, the Department needs to add provisions, like those in 40 CFR 96.14 and 96.51(b)(5), addressing objections made to the designation of the authorized account representative or the alternate AAR. These provisions will prevent the Department from becoming involved in private legal disputes, e.g., concerning contracts among owners and operators of a source. (9)

(*) RESPONSE: The Department has added the provisions of 40 CFR 96.51(b)5 at N.J.A.C. 7:27-31.13(p)5 regarding the disclaimers relating to general accounts. The Department has added the provisions of 40 CFR 96.14 at N.J.A.C. 7:27-31.13(o) regarding the disclaimers relating to compliance accounts. Additionally, the Department has added the disclaimer at 40 CFR 96.12(a) and (b) relating to the change of an AAR and alternate AAR at N.J.A.C. 7:27-31.13(k).

82. COMMENT: Existing 31.13(j) requires a General Account Information form with elements similar to 40 CFR 96.51(b), except 31 does not include the certifications required at 40 CFR 96.51(b)(1)(iv) for general account owners. (9)

(*) RESPONSE: The Department has added the specified language at N.J.A.C. 7:27-31.13(p) as modeled at 40 CFR 96.51(b). This new language includes the certification statements mentioned in the comment.

83. COMMENT: At N.J.A.C. 7:27-31.13(o), the Department should remove the words "compliance with" after the words "submission relating to." The certification is needed for all submissions under the NO_x Trading Program (e.g., monitoring-related submissions) not just those relating to end-of-year reconciliation. Also, the Department needs to add an analogous provision for AARs of general accounts. (9)

RESPONSE: The certification statement language proposed at N.J.A.C. 7:27-31.13(o) is recodefied at (n) upon adoption and is modeled after the language at 40 CFR 96.10(e)1 and is

general in nature in absence of any other direction as to the certification statement language to be used for a particlar submission related to the NO_x Budget Program. Specific certification statement language is referenced in the rule as follows: N.J.A.C. 7:27-31.13(p)1iv & (p)2iii specifies certifiactions statements relating to general accounts, N.J.A.C. 7:27-31.10(d)3 specifies certifcation statements for transfer requests, N.J.A.C. 7:27-31.13(m)3 specifies certification statements the certification of representation form, N.J.A.C. 7:27-31.8(f)6 specifies the certification statement to be used for incentive allowance claims, N.J.A.C. 7:27-31.12(c)12 specifies the certification statement to be used for early reductions (1997-1998), N.J.A.C. 7:27-31.16(a)2vii specifies the certification statement to be used for the reporting to the Department of 1996-1998 data; N.J.A.C. 7:27-31.18(c)6 specifies the certification statement to be used for the compliance certification report.

N.J.A.C. 7:27-31.14 Emissions Monitoring

84. COMMENT: Emissions monitoring. The current rules require that NO_x emissions be monitored in accordance with the OTC "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" (OTC Guidance). The OTC Guidance represents a major effort, and a largely successful one, to provide substantial technical guidance and clarification relevant to the emissions monitoring, data collection and reporting requirements of the NO_x Budget rule. The proposed amendments to N.J.A.C. 7:27-31.14 completely eliminate the use of the OTC Guidance after 2002, and instead incorporate applicable monitoring requirements from federal rules.

The commenter recognizes that in eliminating the use of the OTC Guidance after 2002, the Department is simply deferring to the monitoring provisions of the NO_x SIP Call, which do not refer to the OTC Guidance. However, the commenter requests that the Department: · Clarify the effect of this change on alternative monitoring plans already approved under the OTC Guidance, as discussed in more detail below, and · Work with the USEPA on any revisions to the NO_x SIP Call necessary to ensure that all concepts from the OTC Guidance which have proven to be useful and workable are incorporated into the SIP Call. (11)

RESPONSE: The use of alternative monitoring methods approved under the OTC Guidance is discussed in the following comment. The USEPA has incorporated many of the concepts of the OTC NO_x Budget Monitoring Guidance in developing the revised monitoring provisions of 40 CFR Part 75. Department staff has been kept informed of the changes to the monitoring and reporting under 40 CFR Part 75 and will continue to work with USEPA staff.

85. COMMENT: Requirement to use fuel flowmeters. The Department's Bureau of Technical Services has worked with the commenter to establish an alternative method of monitoring heat input to its combustion turbine (CT) peaking units. That method uses the heat rate of these units (expressed in MMBtu/MW-hr) and the output of the units (expressed in MW-hr) to calculate the heat input (expressed in MMBtu) to the units. That heat input is then used as the basis for calculating the units' NO_x mass emissions. The commenter has used similar methods since 1995 to document compliance with NO_x averaging plan requirements under N.J.A.C. 7:27-19.6, to the Department's satisfaction. These methods are conservative in their estimation of NO_x mass emissions, simplify recordkeeping and reporting burdens for the Department, and simplify the enforcement program's efforts to verify compliance.

In approving this alternative, the Department applied the OTC Guidance. The OTC Guidance, in turn, provides that alternative monitoring systems must meet the requirements of 40 CFR Part 75,

Subpart E. The proposed amendments to N.J.A.C. 7:27-31.14 would impose the same standards, by requiring petitions for alternative monitoring requirements to be submitted in accordance with 40 CFR 75.66. Petitions submitted under 40 CFR 75.66 are reviewed under 40 CFR Part 75, Subpart E.

Since the standards which governed the Department's approval of the commenter's alternative monitoring are essentially the same as the standards which would be applied after 2002 under the rules as amended, the commenter believes that the approval would remain valid after 2002. The commenter asks that the Department confirm whether this belief is correct. If the approval will remain valid after 2002, then the Department's Economic Impact Statement is correct when it asserts that the proposed amendments and new rule will have a negligible economic impact. If, however, the approval will not remain valid, then for the reasons discussed below, the proposed amendments to N.J.A.C. 7:27-31.14 will have a major economic impact.

40 CFR 75.71 establishes requirements for monitoring NO_x emission rates and heat inputs for the purpose of calculating NO_x mass emissions. Under 40 CFR 75.71(d), gas-fired and oil-fired peaking units must use the procedures in 40 CFR Appendix D to determine hourly heat input. Appendix D, in turn, requires that fuel flowmeters be installed and used to measure fuel flow.

Using fuel flowmeters to measure fuel flow and calculate heat input adds substantially to the cost of complying with the NO_x Budget program, without adding any demonstrated benefit. As explained in the attached letter from the commenter to Mr. John Preczewski of the Department's Bureau of Technical Services, the commenter would have to install nearly 200 fuel flowmeters to comply with the proposed amendments, and incur about $9.5 million in capital costs and $378,000 in annual operation and maintenance costs to install and operate the flowmeters. Considering the Department's apparent satisfaction that the commenter's current methods of determining heat input to the CT units yield results that are conservative, reliable, precise, accessible, and timely, this would not appear to be money well spent. The same money would be much more productively invested in NO_x emission control technologies.

N.J.A.C. 7:27-31.14(y) and (z) do allow sources to petition the NETS Administrator under 40 CFR 75.66 for an alternative to any of the monitoring requirements of N.J.A.C. 7:27-31.14. However, the speculative prospect of obtaining approval of such a petition under the revised rules must be compared with the certainty of already having an approval of an alternative monitoring approach under the current rules which, in the absence of any rule change, would not expire as of any date certain.

Accordingly, unless the Department's existing approval of the commenter's alternative monitoring will remain valid after 2002, the commenter must respectfully disagree with the Department's assertion that the proposed amendments and new rule have a negligible economic impact because they leave the basic components of the NO_x budget program unchanged. If the Department believes that the approval will become void after 2002, then the commenter requests the Department's assistance in working with the USEPA in an effort to add flexibility to Part 75, so that it can accommodate heat input monitoring methods that the Department has already found satisfactory. (11)

RESPONSE: Any alternative monitoring established under the OTC Guidance would need to be submitted for review and approval under the context of the SIP Call NO_x Budget Cap and Trade Program for 2003 and beyond. These alternative monitoring methods will be reviewed on a case-by-case basis. Although there is no certainty in the extension of any alternative monitoring approval,

methods that provide adequate relative accuracy will be allowed to be used in the 2003 phase of the program. The monitoring provisions are the most important aspect of the program, for they are the measure of emissions that must be authorized by allowances; consistent monitoring across the program is essential for the success of the program.

An oil or gas fired peaking unit that is a Low-mass-emitting unit does not need to use a fuel flow meter in order to determine the heat input of the unit. Such units may use the low-mass-emitting monitoring options under 40 CFR 75. These Low Mass Emitting monitoring provisions allow for the use of long term fuel flow records or maximum heat input values for heat input. Either of these do not require the installation of fuel flow meters.

86. COMMENT: Inconsistencies with current Federal rules. The proposed amendments to N.J.A.C. 7:27-31.14 are not entirely consistent with the most current corresponding Federal rules which the EPA adopted on May 26, 1999 (64 F.R. 28563). For example, N.J.A.C. 7:27-31.14(o)2 provides that the changing of flow rate monitor polynomial coefficients requires recertification of the monitoring system. However, the current version of 40 CFR 75.20(b) provides, "changing the polynomial coefficients or K factor(s) of a flow monitor shall require a 3-load RATA, but is not considered to be a recertification event." (11)

(*) RESPONSE: The provisions at N.J.A.C. 7:27-31.14 are taken directly from 40 CFR 96 Subpart H. These provisions were published when USEPA was still fine tuning the provisions at 40 CFR 75, which are referenced by 40 CFR 96. Regarding the example cited by the commenter, N.J.A.C. 7:27-31.14(o)2 is identical to 40 CFR 96.71(b)2. However, after confirming with USEPA, the provisions at 40 CFR 75.20(b) are correct in that changing the flow rate monitor polynomial coefficients do not require recertification. Therefore, the Department has removed that example from N.J.A.C. 7:27-31.14(o)2.

87. COMMENT: Regarding other monitoring provisions, N.J.A.C. 7:27-31.14(j)1 requires the installation of systems to monitor NO_x emission rate, NO_x concentration, heat input, and flow. The provision cross-references N.J.A.C. 7:27-31.14(r), (s), and (aa). The commenter questions whether these cross-references are correct, because they do not appear consistent with paragraph (j)1. (11)

(*) RESPONSE: N.J.A.C. 7:27-31.14(j)1 was modeled directly from 40 CFR 96.70(a)1. This provision references 40 CFR 75.72 and 75.76. When the Department proposed N.J.A.C. 7:27-31.14(j)1, the reference was mistakenly changed. The Department is correcting the proposed references to subsection (r), (s) and (aa) by replacing them with the correct references to 40 CFR 75.72 and 75.76.

88. COMMENT: N.J.A.C. 7:27-31.14(k)2 and 3 require sources which, at any time after January 1, 1995, serve a generator with capacity greater than 25 MW to comply with certain requirements by 90 days after the date on which the source commenced commercial operation. These provisions create retroactive compliance responsibilities, and the resulting possibility of retroactive violations for noncompliance with requirements that were not previously contained in New Jersey rules. The commenter respectfully questions whether this is appropriate. Even if the requirements are drawn from corresponding federal requirements, the State should not be retroactively creating new violations. (11)

RESPONSE: These provisions do not create retroactive violations for they apply to sources that commence operation on or after January 1, 2002. The requirement to monitor and report emissions

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could be as early as 90 days after the commencement of commercial operation if the source serves a generator with a nameplate capacity greater than 25 MW any time on or after January 1, 1995.

89. COMMENT: N.J.A.C. 7:27-31.14(o)2 requires an owner or operator to recertify monitoring systems "whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the NETS Administrator or the Department determines" significantly affects the ability of the system to comply with certain requirements. The commenter questions whether this provision makes it necessary to consult with the NETS Administrator and the Department before making any replacement, modification or change, and reach agreement on whether the replacement, modification or change triggers recertification requirements. (11)

RESPONSE: Consultation is not required; however, if it is not clear to the owner or operator of a source whether a change would need to be recertified, the owner and operator should contact USEPA's Clean Market Division or the Department's Bureau of Technical Services.

90. COMMENT: The Department uses the terms "baseline source" and "budget source" while 40 CFR part 75 uses the terms "unit" and "source." There are a few other terminology differences. the Department's rule will be clearer if the following language is added at the beginning of this section to reconcile the Department's terms with those in 40 CFR part 75:

> For purposes of complying with the requirements in 40 CFR part 75, the definitions in 7:27-31.2 of this rule shall apply, and the terms "affected unit," "designated representative," and "continuous emissions monitoring system" in 40 CFR part 75 shall be replaced by "baseline source," "authorized account representative," and "continuous emission monitoring system" respectively as defined in 7:27-31.2. (9)

(*) RESPONSE: The Department agrees that clarification about terminology differences between N.J.A.C. 7:27-31 and 40 CFR 75 are beneficial to the reader. As a matter of clarification about a statement made in the comment, the Department uses the term "source" and "facility" while EPA uses the generally equivalent terms "unit" and "source" respectively. For example, the Department uses the term "budget source" while EPA uses the equivalent term "NO_x budget unit." The Department has therefore added the suggested language in this comment at N.J.A.C. 7:27-31.14(i). The only difference between the language the Department is inserting and the language offered by the commenter is that the definition at N.J.A.C. 7:27-31.2 that corresponding with the definition of "affected unit" at 40 CFR 75 is "budget source" and not "baseline source."

91. COMMENT: Regarding N.J.A.C. 7:27-31.14(a) and (o), sources which are not otherwise regulated by the acid rain regulations will be required to comply with emission monitoring provisions beyond those imposed under the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program." Additionally, sources using site specific default methodology must comply with the "Low Mass Emission Unit" (LMEU) provisions under acid rain monitoring regulations. These requirements will require those sources without a continuous emissions monitoring system (CEMS) to surrender excessive allowances for emissions which have never occurred.) While some level of over-surrender occurs under the existing "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," it is not nearly as excessive as under 40 CFR, Part 75. The problems with the LMEU provisions should also be considered for their effect on NO_x affected synthetic minor sources and state emissions inventories for nitrogen oxides.

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The proposed regulations should incorporate the monitoring requirements set forth in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," unless dramatic changes are made to the LMEU provisions. The "NO_x Model Rule" monitoring guidance document was a compromise developed by the states and stakeholders in the OTR. That guidance document applies appropriate conservatism to non-CEMS reported sources.

The monitoring requirements of this section are significantly different than those required by the "Monitoring Guidance Document" developed under the "NO_x Model Rule." The proposed revision relies on the new 40 CFR 75.19. The specific problem with that section is the unit-specific default NO_x emission rates for low mass emitter units.

In Part 2, (G) of the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" ("Guidance Document"), incorporated into the existing rule, oil and gas fired peaking units (e.g. simple-cycle combustion turbines) are permitted to use a-tested NO_x "default" emission rate. Coupled with long-term fuel flow measurement, this provides a cost effective emission monitoring method for NO_x monitoring and reporting. Page 17 of the "Guidance Document" specifies that the average NO_x emission rate be used as the "default" value. This "default" emission rate includes the average of a series of peak load tests of a single unit or, multiple "identical units." This involves averaging the peak load NO_x rates for a number of units to calculate a default rate that all units would use for reporting for all "identical units." This is consistent with the language that requires representative testing of multiple units to have a NO_x emission rate within 10% of the average of all units tested.

Revised Part 75, Section 75.19 (c)(1)(iv)(C) (1, 2, 3, 4, 5 and 6) not only requires the use of the highest NO_x test run conducted using Appendix E procedures (by fuel) for any and all units (as opposed to the average of all peak load tests for all "identical units"), but then requires that this highest peak value of all runs to be multiplied by 1.15 (15% "increase") to create a default emission rate to be used for NO_x emission reporting. For units with "add-on" controls, the regulations would require the use of 0.15 lb/MMBtu as the default even if actual NO_x rates are significantly lower.

These requirements create the following problems:

a.) Combustion turbines operate at base load conditions almost exclusively. Appendix E requires a test series at four load conditions, including "peak" load. The commenter's test data show that NO_x defaults generated at peak load are approximately 10% higher than same day base load NO_x emission rates (see attached Table 1). The language in 75.19 will require future tests to follow Appendix E procedures including peak load runs unless both the state and EPA can be convinced that base load testing is more representative. Additionally, if only a default value is being developed, and not an Appendix E NO_x vs. load curve, single load testing is all that is required. Data submitted to EPA shows that the highest NO_x rate always occurs at the highest load. This is consistent with the formation of NO_x during the combustion process and is reasonable. Unless EPA has data which show combustion processes that produce more NO_x at reduced load, single load testing (either base or peak load) is all that should be required for sources which are only establishing default NO_x rates.

b.) By using the highest NO_x run of all units tested (by fuel), then multiplying that value by 1.15, a default value is developed that is almost 30% greater than same day base load NO_x emission rates (see attached Table 1). Table 1 was developed from test data from the commenter's owned simple cycle combustion turbines located in Pennsylvania. EPA justified the 15% "multiplier" to the highest peak load value by reviewing CEMS data from uncontrolled combustion turbines that

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were acid rain affected. The dilemma for non-acid rain affected units is that EPA reviewed annual data and concluded that NO_x rates are highly variable. NO_x can vary greatly on a seasonal basis (eg. July vs. January) but will not show great variability within the control period. Language should be included to exempt non-acid rain affected sources from using the 1.5 multiplier because they are required to report emissions only during the May through September period. The use of peak load test data for defaults increases the reported value 10% above measured same day base load emissions but the 15% multiplier will increase reported NO_x rates almost 30% over typical base load operating conditions.

c.) The requirement to employ the highest measured NO_x rate tested is inconsistent with the language in 75.19(c)(1)(iv)(B)(3) requiring all tested units to be within 10% of the average NO_x rate of all "identical units" tested. Obviously this language was borrowed from the OTC NO_x Budget Program. However, unlike the OTC Guidance Document which specifies that the average NO_x rate be used as a default, the requirement to use the highest rate makes the "identical units" testing criteria meaningless. If forced to use the highest rate of all test runs at all units, there is no reason to require other units emissions to be within 10% of the average NO_x rate. The language in these section's should be changed to read "the average of all units tested" instead of the highest rate at any unit.

d.) Neither acid rain affected nor non-affected units that choose to develop and employ an Appendix E NO_x vs. load curve (regardless of the time of year the curve is developed) are required to accommodate seasonal variations, or increase the values along the curve by 15%. This is a significant disadvantage to sources using the less costly default method. Units following the OTC Guidance Document procedures to develop NO_x defaults are already over-reporting because the average NO_x rate measured at peak load is used to represent all operating scenarios, including base load and operations below base load. If sources using Appendix E NO_x vs. load curves are not required to accommodate the effect of seasonal ambient conditions, sources already employing an inherently conservative approach should not be required to accommodate seasonal ambient conditions. To be consistent, EPA should eliminate the requirement to multiply NO_x peak load defaults by 1.15, for non-acid rain affected units which are not required to report emissions which occur outside the ozone season.

e.) The language in 75.19 (c)(1)(iv)(C)(4, 5 and 6) for low mass emission units with "add on" controls which requires a unit or groups of units that achieve an emission rate below 0.15 lb/MMBtu to use 0.15 lb/MMBtu as their default provides a powerful disincentive for sources to achieve high levels of control. Importantly, reductions in the NO_x emission rate below 0.15 lb/MMBtu will not be recognized in the quarterly report. If a unit controls to an emission rate less than 0.15 lb/MMBtu, the actual test data that documents this level of performance should be used. This language should be deleted as it demotivates those sources that can achieve the highest level of NO_x control by providing no value to the additional emission reduction.

The ultimate problem with the LMEU provisions is the surrender of allowance for emissions which don't occur. The level of conservatism is extreme and inappropriate. Additional problems with use of LMEU monitoring is the level of "actual" emissions that would be required to be a synthetic minor. As little as 8.3 tons of NO_x per year would actually be emitted, as the extremely conservative requirements would report that level as 25 tons "emitted."

Additional problems stem from 75.19(c)(3)(ii)(D) and (E) concerning long term fuel flow measurement calculations. This language requires the measurement of specific gravity and the calculation of heat input using equation LM-2 or the defaults in Table 5. For non-acid rain affected

sources, there is no need to measure or record specific gravity of fuel oil as oil consumption is recorded as gallons and the calorific value is reported as Btu per gallon. The heat input to the unit can then be determined by multiplying the oil consumed and the calorific value of oil.

Further deviation from the specifications of the OTC "Guidance Document" also creates problems for sources that are using CEMS to meet 40 CFR Part 60 or other state defined monitoring requirements. These sources have invested significantly in upgrading data acquisition and handling system hardware and software to comply with the Monitoring Guidance Document Provisions. Any deviation from those monitoring requirements under the proposed amendments means these sources will need to make additional expenditures to satisfy the new requirements. This has been identified as a "cost of doing business," however, it is an unnecessary cost as it does not improve the representativeness of the emissions data.

Consequently, it is strongly recommended that the amended 7:27-31 use the monitoring requirements in the existing rule. Use of these monitoring requirements solves all of the problems associated with the monitoring provisions of the proposed amendments. (2)

RESPONSE: The monitoring requirements allow Low Mass Emitting units to measure their emissions without use of CEMs are conservative. This ensures that less precise/accurate measurement techniques do not result in the under use of allowances. This conservative reporting of NO_x emissions is necessary to minimize the environmental risk due to the absence of CEMs. This is required throughout the OTC in the 2003 phase of the program as well as in any other state that joins pursuant to EPA's NO_x SIP Call. Consistent monitoring is paramount to the success of the program. It is for this reason that the monitoring provisions are modeled directly from the USEPA regulations and that the Department is not making a state-specific exception to these requirements.

92. COMMENT: At N.J.A.C. 7:27-31.14(p)(3) and (p)(4), both of these provisions refer to sources that are reporting on a control period basis and therefore should be renumbered (x)3iii and (x)3iv respectively. (9)

RESPONSE: The provisions of N.J.A.C. 7:27-31.14(p) concern the timing of initial certification of monitors, while the provisions of N.J.A.C. 7:27-31.14(x) refer to submission of emission data reports. Therefore, the location of N.J.A.C. 7:27-31.14(p)3-4 is appropriate.

93. COMMENT: At N.J.A.C. 7:27-31.14(s), there appear to be some missing words in this provision. The Department should revise the paragraph as needed. (9)

(*) RESPONSE: The Department modeled N.J.A.C. 7:27-31.14(s) after 40 CFR 96.72(b). After thorough review of both of these citations, the Department has determined that there is a minor error in the wording that made the provision difficult to read. The Department has corrected this error upon adoption.

94. COMMENT: At both N.J.A.C. 7:27-31.14(x)1i and (x)2ii(1), the Department has included language which refers to certifying monitors for the purpose of verifying and quantifying emissions for early reduction credits. Since the Department is distributing its pool of early reduction credits via banked OTC allowances, the following language is unnecessary and confusing and should be deleted from both provisions:

"that are not required to certify monitors by May 1, 2000 under (k)1 above." (9)

(*) RESPONSE: In drafting the proposed provisions at N.J.A.C. 7:27-31.14 (modeled after 40 CFR 96 Subpart H), the Department attempted to remove the provisions that referred to the 40 CFR 96.70(b)1, which would have been codified at (k)1. The Deparmtent has removed the reference to provisions that are not applicable to this rule as suggested by the comment.

95. COMMENT: Regarding N.J.A.C. 7:27-31.14(x)3, submission of data in a format specified in Subpart H of 40 CFR 75 and 40 CFR 75.64 will require significant additional expenditure to Ozone Transport Region (OTR) sources which have just recently been required to upgrade their data acquisition and handling systems (DAHS) to report in Electric Data Report Version 2.0 (EDR v 2.0). Sources outside the OTR were not subject to this requirement.

The Department should enter into discussions with EPA to allow the continued use of EDR v 2.0. This revision to reporting format places additional, unnecessary economic burdens on sources located in the Ozone Transport Region. The reporting format change is completely unnecessary for reporting from non-acid rain sources. The revisions were developed for the reporting of information from acid rain affected sources to reflect other modifications to 40 CFR 75. EDR version 2.0 satisfies all of the needs of the ozone season NO_x program for non-acid rain sources without any compromise in reporting representativeness. For acid rain affected sources, an opportunity to use EDR version 2.0 with some modifications to report the additional quality assurance information should be pursued. (2)

RESPONSE: During the 1999 through 2002 phase of the program, owners and operators of units subject only to the NO_x Budget Program may continue to report using EDR Version 2.0. According to the monitoring requirements adopted herein, owners and operators of units subject only to the NO_x Budget Program must begin to report using EDR v2.1 requirements for emissions as early as May 1, 2002. NO_x Budget sources that are also subject to the Acid Rain Program may continue to use EDR version 2.0 until the Acid Rain Program regulations require the use of EDR version 2.1. At such time the use of EDR version 2.1 would be acceptable for the purposes of this rule.

N.J.A.C. 7:27-31.16 Reporting

96. COMMENT: The amendment to 31.16(d)(2), includes the term "net useful steam output," while existing 31.2 includes a definition for the term "net useful heat output." The Department should clarify the difference between these two terms. (9)

(*) RESPONSE: This provision calls for the reporting of the total net energy output of a budget source (expressed in total net eletric output and total net "steam" output). The Department intended to use the defined term "net heat output" rather than "net steam output." Although the implied information to be reported is the same using wither of these terms, the Department is using the defined term upon adoption.

97. COMMENT: Regarding the requirement at N.J.A.C. 7:27-31.16(d)2, the commenter recommends removing the requirement to report output data if the source is allocated on a heat input basis. Section 31.7(d)3 describes the method for determining a sources NO_x emission rate in lb/MMBtu.

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Section 31.7(d)3iii(1) proposes an allocation calculation method for an electric only or cogeneration facility that has an emission rate greater than 0.15 lb/MMBtu. This method uses net electric output and thermal energy output data to determine allowances. Section 31.7(d)3iii(2) proposes an allocation calculation method for the same category of facility that has a NO_x emission rate less than 0.15 lb/MMBtu. This method uses allowable and actual emissions data to determine allowances. Section 31.16(d)2. proposes that beginning with the third quarter EDR of 2000 and each third quarter thereafter the total net electric output and the total net useful steam output for the control period be reported. The commenter recommends to the Department that since sources with emission rates less than 0.15 lb/MMBtu will not be receiving allowances based on electric power and thermal output that sources in this category not be required to report net electric output and total net useful steam output as suggested by section 31.16(d)2. This information will serve no beneficial purpose to the Department or the source for units that operate under the 0.15 lb/MMBtu while on the other hand could constitute a substantial expense and additional workload depending on protocols developed to obtain and report the data. If a source is not entitled to the benefit of determining its allowances on an output basis it should not be burdened by a requirement to report output data. (4)

RESPONSE: The Department is retaining the requirement to report net output from all budget units. This information is necessary so that an allowance allocation methodology that is more widely based upon output information could be possible to implement in the future. The allowances for the 2003 phase of the program are allocated three years in advance of each ozone season. If the Department were to move toward an allocation methodology that is more widely based upon output information, then the Department would need to have output data from a much wider population of budget sources. There are advantages of having this information reported on an ongoing basis rather than at a later date. These advantages include not requiring sources to go back into historical records to retrieve the information and not requiring as much information to be reported at one time. Additionally, the information would be particularly useful for the Department in improving its air emissions inventory during the ozone season.

98. COMMENT: N.J.A.C. 7:27-31.16(d)2 proposes that beginning with the third quarter EDR of 2000 and each third quarter thereafter the total net electric output and the total net useful steam output for the control period be reported. The EDR is an hourly report specific to 1 unit or source and contains data for 3 months of a quarterly period. The third quarter spans July 1 to Sept. 30. A control period is a 5 month period from May 1 to Sept. 30. In light of this it is implied by the wording of this section that the output data required will be in text format included in a 900 record type for each source. If this is not the case please clarify. (4)

RESPONSE: The commenter is correct that the ozone season output data should be submitted in text format in the 900 in the third quarter EDR report. As a matter of clarification of the comment, although some of the field in the EDR require hourly data, there are other fields in the EDR that are to contain ozone season data (for example, cumulative ozone season NO_x mass emission).

99. COMMENT: The commenter notes that it is unclear whether the New Jersey rule retains N.J.A.C. 7:27-31.16(e) providing that a permanently shutdown budget units can be exempt from permitting, monitoring, reporting, and other requirements under the program. The Department should include language in (e) addressing record keeping requirements and the loss of the exemption (see 40 CFR 96.5(c)). (9)

RESPONSE: The current rules at N.J.A.C. 7:27-31.16(e)3 allow the Department to make certain conditions of approval of an exemption of a source from the NO_x Budget Program. The Department intends to include the same types of requirements that EPA mentions at 40 CFR 96.5(c) in any approval for a shutdown exemption, including the record keeping requirements that demonstrate the the source has been permanently shutdown.

N.J.A.C. 7:27-31.17 End of season reconciliation

100. COMMENT: At N.J.A.C. 7:27-31.17(c)2, the Department needs to specify that the balance in the compliance account includes only allowances available for compliance. For example, the balance does not include deductions for underutilized opt-in sources. Please see comments on 7:27-31.2 for "excess emissions." (9)

(*) RESPONSE: As suggested, the Department has modified this provision by adding the phrase "available for use." The commenter cited the case of the underutilization of opt-in sources. The rules at N.J.A.C. 7:27-31.17(g)3 are clear about the procudure to be used in this case. Another example of allowances that are not available for use is that 2004 vintage allowances may only be used in the years 2004 and beyond (this concept is expressed at N.J.A.C. 7:27-31.10(a)2). Another example of a qualification for use surrounds the use of banked allowances when progressive flow control is applicable. In this case, a certain percentage of banked alloacnes are available for use on a one-for-one basis and the rest of the banked allowances are available for use on a two-for-one basis (that is two allowances would authorize the emission of one ton of emissions). This case is specified at N.J.A.C. 7:27-31.17(g)2. All of these cases qualify the amount of allowances that are avaible for use in determining an individual budget source's compliance with the NO_x Budget Program.

101. COMMENT: At N.J.A.C. 7:27-31.17(c) through (g), the Department should revise the rule to include deductions from overdraft accounts. See comment in 7:27-31.13; and 40 CFR 96.54 (b) and (d). (9)

RESPONSE: As mentioned in response to comment #76, the Department is not authorizing the use of overdraft accounts for compliance with this program due to enforcement concerns.

102. COMMENT: At N.J.A.C. 7:27-31.17(f), the Department needs to revise this provision to follow the first in, first out order of deductions set forth in 40 CFR 96.54 (c)(2). That order of deduction distinguishes between allowances allocated to the account and those transferred to the account. (9)

RESPONSE: The current provision at (f) more generally describes the "first-in, first-out" order of deductions in the absense of a reqeust from a the AAr to perform the deduction order in another manner. The providions at 40 CFR 96.54(c)2 do describe the process with better precision. Accordingly, the Department has added provisions modeled after EPA's to clarify the "first-in, first-out" order of deductions at N.J.A.C. 7:27-31.17(f) upon adoption.

(i) First, those allowances that were allocated for the control period directly to the account;
(ii) Second, those allowances that were allocated for the control period to another acount and subsequently transferred in the account, in order of their date of transfer;
(iii) Third, those allowances that were allocated directly to the account for a prior control period;

(iv) Forth, those allowances that were allocated for a prior control period to another account and subsequently transferred in the account, in order of their date of transfer.

103. COMMENT: At N.J.A.C. 7:27-31.17(g)3, the Department needs to make it clear that the opt-in source deductions in this provision will take place before (g)1 and (g)(2). (9)

(*) RESPONSE: Upon adoption, the Department has reordered the (g)1 through 3 to clarify the order in which the allowances will be deducted for opt-in sources, whereby the underutilization deduction will precede the deduction of allowances to authorize the emissions of NO_x.

N.J.A.C. 7:27-31.18 Compliance Certification

104. COMMENT: At N.J.A.C. 7:27-31.18(a) and (b), the compliance certification report needs to be sent to both the Administrator and the Department by the allowance transfer deadline. (9)

(*) RESPONSE: The Department has made this clarification upon adoption.

105. COMMENT: At N.J.A.C. 7:27-31.18(c)3, the compliance certification needs to certify that sufficient allowances are in the compliance account after all deductions such as those for underutilized opt-in sources. Please see comments on 7:27-31.2 for "excess emissions." (9)

(*) RESPONSE: This provision requires a statement indicating whether sufficient allowances are held to properly account for the budget source's NO_x emissions during the control period. The commenter is correct that such proper accounting for the emissions does include the underutilization deduction described at N.J.A.C. 7:27-31.17. The Department is clarifying this provision by adding the phrase "purusant to the provisions of N.J.A.C. 7:27-31.17" to this provision upon adoption for clarification.

106. COMMENT: At N.J.A.C. 7:27-31.18(e), the Department should revise this provision to provide for review and adjustments by the Administrator, as well as the Department. (9)

(*) RESPONSE: The Department has amended this provision in order to allow adjustments per the NATS Administrator so that it may correct any errors it may encounter.

N.J.A.C. 7:27-31.19 Excess Emissions

107. COMMENT: According to 40 CFR part 96, each ton of excess emissions represents a separate violation. This section needs to include such language. (9)

RESPONSE: This provision is expressed at N.J.A.C. 7:27A-3.10(m)31.

108. COMMENT: The commenter reiterates its recommendation for the use of overdraft accounts to be addresses in this section. (9)

RESPONSE: As mentioned in response to comments #76 and #101, the Department is not authorizing the use of overdraft accounts for compliance with this program due to enforcement concerns.

N.J.A.C. 7:27-31.22 Compliance Supplement Pool

109. COMMENT: The rules governing the use of the compliance supplement pool should be revised so that cleaner-burning dispatchable facilities with shortfalls resulting from increases in usage are eligible to apply for these allowances under the "demonstration of need" provision. (8)

RESPONSE: The purpose of the Compliance Supplement Pool is to provide a limited amount of allowances for early reductions and for demonstration of need. This new section provides for such. First by allowing New Jersey budget sources to turn in certain banked allowances and, effectively, exchange them for compliance supplement pool allowances as an EPA-approved early reduction-like procedure. If there are any allowances remaining in the pool after this procedure occurs, then any remaining allowances would be allocated to any approved source that had requested compliance supplement pool allowances on a demonstration of need. Any source, including any "cleaner-burning dispatchable" source, may apply to the Department to receive allowances from the pool pursuant to N.J.A.C. 7:27-31.22(b)6.

110. COMMENT: N.J.A.C. 7:27-31.22 refers to 1,479 allowances in New Jersey's compliance supplement pool. As a reminder, the Department may have to revise the Trading Program Budget numbers, including the compliance supplement pool number, depending on the resolution of errors in EPA's Final State Budgets published in the Technical Amendment on May 14, 1999. (9)

(*) RESPONSE: At the time the Department proposed these new rules, it was understood that the figure USEPA published in the Federal Register on May 14, 1999, was the final figure for New Jersey's compliance supplement pool (that is 1,479 allowances), because the USEPA had already corrected the figure from 1,722 allowances as published in the Federal Register on October 27, 1998. It is for this reason, the Department proposed this figure in absolute terms. Since the Department now knows that the size of New Jersey's compliance supplement pool has changed upon further action by USEPA, the Department has amended the provisions at N.J.A.C. 7:27-31.22(a) , (b)2, and (b)3 upon adoption. On March 2, 2000, the USEPA changed New Jersey's compliance supplement pool to 1,550 allowances (See 65 FR 11228, 3/2/2000). The Department has changed the provisions at N.J.A.C. 7:27-31.22 that reference the size of the compliance supplement pool to reflect this figure. New language at subsection (a) would automatically change the size of New Jersey's compliance supplement pool from 1,550 allowances to whatever number EPA publishes, if it publishes a figure different from 1,550 allowances before the Department allocates the pool. The provisions at paragraphs (b)2-3 are changed to refer to the total number of allowances in the compliance supplement pool in a general manner rather than the absolute figure of 1,550 allowances.

111. COMMENT: According to 40 CFR 51.121 only reductions made in the 2000, 2001 and 2002 control periods are eligible to count as early reductions. This also applies to OTC banked allowances which will be carried over into the NO_x Budget Trading program as early reduction credits from the Compliance Supplement Pool. Therefore, New Jersey should revise N.J.A.C. 7:27-31.22(b)1 to read as follows:

"The Department shall determine the number of banked allowances from 2000, 2001, and 2002 vintage OTC control periods, held in New Jersey compliance accounts as of April 1, 2003; "(9)

(*) RESPONSE: At the time the Department proposed these new rules, it was under the impression that any banked OTC NO_x Budget allowance (not just those of vintage years 2000 through 2002) were valid for the purposes of the compliance supplement pool based on the preamble to the NO_x SIP Call as published in the Federal Register on October 27, 1998. Since USEPA is clarifying its position on the acceptability of banked OTC NO_x Budget allowances in this comment, the Department is amending the rule at N.J.A.C. 7:27-31.22(b)1 through 3 to conform with the intent of the NO_x SIP Call using language similar to that suggested by the commenter.

112. COMMENT: For the same reason as in the previous comment, the definition of A_{total} in the formula at N.J.A.C. 7:27-31.22(b)3 needs to be revised to include only 2000, 2001 and 2002 vintage OTC allowances. (9)

(*) RESPONSE: The Department has made this clarification. THE Department has similarly clarified the definition of A in the formula at N.J.A.C. 7:27-31.22(b)3 and in the text at N.J.A.C. 7:27-31.22(b)2.

113. COMMENT: At N.J.A.C. 7:27-31.22(b)5, the typographical error "retite" should be corrected to "retire." (9)

(*) RESPONSE: The Department has made this correction upon adoption.

N.J.A.C. 7:27A-3.10 Civil and administrative penalties

114. COMMENT: In the preamble to the proposed amendments, the Department identifies proposed changes to the penalties. While Genco applauds the clarity, we are concerned that the surrender of three allowances for one ton of over-emission could strain the greatly reduced budget. Making every day of the ozone season a violation due to a single ton of emission for which an allowance is not surrendered is excessive and unreasonable. The number of violations should reflect only the days for which all emissions can't be accounted for through allowance surrender. Following is an example of this strategy.

150	=	Available NO_x allowances at "true-up"
160	=	Tons of actual ozone season NO_x emissions
September 19	=	Last day on which all NO_x emissions are fully accounted with NO_x allowances
No. of violations	=	11 (September 20 - September 30) if emissions occurred on every day (A fewer number wanted results if emissions occurred on fewer days.) plus 10 (the number of unavailable allowances). (2)

RESPONSE: The surrender of three allowances for each allowance of shortfall pursuant to N.J.A.C. 7:27-31.19 is the one consistent penalty applied throughout the OTC States participating in the NO_x Budget Program. The monetary civil administrative penalty prescribed at N.J.A.C. 7:27A-3 is in addition to the three for one allowance penalty deduction.

In the civil administrative penalty, the amount of the penalty is dependent upon the number of tons of shortfall, confined by the number of days of violation. In the commenters example, there is an allowance shortfall of 10 tons. In such a case, the base penalty would be $20,000. In this case, the statuary penalty cap of 10,000 per day would only come into play if the owner of the source could show, to the satisfaction of the Department, that the number of days of violation for the 10 ton shortfall was one day and not the entire ozone season.

115. COMMENT: The proposed amendments to N.J.A.C. 7:27A-3.10(m)31 establish penalties for a source's failure, by the allowance transfer deadline, to hold allowances in its compliance account sufficient to cover its ozone season NO_x emissions. The maximum penalty depends on (i) whether the violation is a first, second, third or subsequent offense, and (ii) the number of days for which the violation persisted. The violation is apparently presumed to persist for 153 days unless the authorized account representative can prove that the violation persisted for a lesser number of days.

The commenter would appreciate clarification of what would be sufficient proof of the number of days of violation, and offers the following example: A budget source emits 1,000 tons of NO_x during the ozone season. The source initially has 200 allowances allocated to its compliance account. After the ozone season ends, but before the allowance transfer deadline, an additional 790 allowances are transferred to the source's compliance account. As a result, the budget source has only 990 allowances for 1,000 tons of emissions. Records of the budget source's NO_x emissions show that it emitted its 990th ton of NO_x on September 28. Assuming that the records of NO_x emissions are satisfactory to the Department, would production of those records be sufficient to show that the violation persisted for only three days? If not, how would the authorized account representative go about proving how many days the violation continued? (11)

RESPONSE: Like the example in the previous comment, this example is one where there is a ten allowance shortfall in holding the proper number of allowances, assuming that the 990 allowances in the compliance account are valid for use during the control period and that these allowances are not subject to any progressive flow control ratios upon use. The base penalty amount is $20,000. In this example, the Department would assess this penalty for the ten allowance shortfall. The production of records showing that the ten allowance shortfall occurred on three days rather than the whole control period would not change the penalty amount because the acceptance of such records by the Department would only affect a base penalty of $30,000 or more for a first offense level violation. In certain cases, the Department would accept a determination of the number of days of violation in a manner similar to the one illustrated in the example above. The Department's acceptance of such a determination would be predicated upon the quality of the information provided.

116. COMMENT: The Department's proposed calculated penalty amount, based on the severity of the allowance shortfall, is limited by a statutory maximum penalty limit of $10,000 per day for the first offense level, $25,000 per day for the second offense level and $50,000 per day for the third and each subsequent offense levels. Using the Department's penalty structure for a first level offense, the statutory limit of $10,000 per day (for each day of a 153-day ozone season) is approached when the shortfall reaches 90 tons. This amount is excessive given the conditions inherent in the rule that could lead a budget source to be in violation

First, the uncertainties in the proposed allocation for the Years 2000-2002 deprive a budget source of any clear knowledge of its compliance position until the very last month of the year, when the Department actually determines and distributes allowances. A budget source intending to comply

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may suddenly discover that it has an allowance shortfall due to reasons beyond its knowledge or control. This is likely in a year in which many claims are made against the Incentive or New Source Reserves. Once the budget source discovers this shortfall, the rule gives the source one month in which to find and purchase the allowances it needs to reconcile this shortfall. This one-month period falls at the end of the year, when the risk that no allowances may be available is at its highest. A budget source may therefore incur a substantial penalty for a violation it could not foresee and could not prevent.

Second, as currently proposed, the penalty schedule will disproportionately influence the cost of an allowance. For example, if one company holding excess allowances knows that another company faces a substantial penalty, the company with the excess emissions could vastly inflate the selling price of its allowances.

Although the commenter is well aware of the importance of complying with the NO_x Budget Rule, we find the proposed penalty schedule unreasonable and oblivious to contingencies inherent in the rule, which could subject a budget source to substantial fines for reasons beyond the control of the source. Additionally, we strongly urge the Department to make the penalty schedule much more reasonable, and consider mitigating factors such as failure of control apparatus; unforeseen but necessary fuel changes; increased run-time due to nuclear or other base-load generation outages and other unpredictable occurrences which have happened in the past. The redress may be captured by consideration for a generation source which has demonstrated "All reasonable efforts" to meet the intent of the regulation; but, because of an unforeseen operational scenario, could not meet its allowance target. (7)

RESPONSE: The Department believes the penalty provisions are more reasonable than the commenter suggests. In the commenter's example where there is a 90 allowance shortfall, the base penalty amount would be $1,560,000 ($2,000 x 10 + $4,000 x 10 + $10,000 x 30 + $30,000 x 40) In this example, the statutory maximum penalty is $1,530,000, unless the Department accepts proof that the number of days of violation was less than 153 days, in which case the assessed penalty would be a lesser amount.

A shortfall of less than 90 allowances can be limited by the statutory maximum penalty if the owner or operator of the source proves that the period of violation was less than the 153 days of the control period as indicated in the examples presented in the two preceding comments.

Regarding the commenter's concern about the uncertainty of how many allowances will be allocated to an account until one month before the allowance transfer deadline, the Department offers the fact that the vast majority of allowances are allocated before the control period begins and only a small portion is held in reserve until after the control period ends and before the allowance transfer deadline. This does not preclude the AAR from making other arrangements to guarantee compliance before the Department allocates the reserves after the control period. The Department's allocation methodology affords the authorized account representatives of budget sources ample opportunity for compliance.

Regarding the commenter's concern about price gouging, the example offered might be a valid concern only if there was one or few entities that could offer to sell allowances. However, based on the experience of Acid Rain and NO_x Budget cap and trade programs to date and based on the fact that allowances in the multi-state NO_x Budget program are allocated to hundreds of entities, this situation is extremely unlikely. In the commenter's example, the buyer would almost certainly be able to find another seller who would offer a competitive sales price.

Finally, the Department believes that the penalties for failing to comply with the fundamental aspect of the program are reasonable. The amount of the penalty increases as the magnitude of the allowance shortfall increases. The smallest shortfall (one allowance) would only carry a $2,000 penalty. Very large shortfalls will carry heavy monetary penalties capped by the statutory maximum civil administrative penalties. This success of this program in reducing NO_x emissions is a key part of the both Department's plan for ozone attainment for New Jersey and the air quality in the region. The penalties for violation of this important program are weighted appropriately.

Other Comments

117. COMMENT: The Department should clarify if the provisions of 40 CFR 96.6(f), "liability" and 40 CFR 96.7 "Computation of time" are addressed by other State regulations. (9)

RESPONSE: The provision of 40 CFR 96.6(f)1-2 is addressed in N.J.A.C. 7:27A-3.1 et seq. The provision of 40 CFR 96.6(f)3 is not applicable in New Jersey because permits issued by the Department do not authorize the Department to excuse the requirements of this subchapter or any other requirement under the Air Pollution Control Act. The provisions of 40 CFR 96.6(f)4-6 are generally addressed by N.J.A.C. 7:27-31.3(a) and specifically addressed throughout the requirements at N.J.A.C. 7:27-31. Therefore, the provisions at 40 CFR 96.7 do not need to be codified further.

Agency Initiated Changes

. At N.J.A.C. 7:27-31.2, in the definition of "authorized account representative," the Department has removed the word "as" as a grammatical correction.

. At N.J.A.C. 7:27-31.2, in the definition of "continuous emissions monitoring system," the Department is removing the extra "s" in the word "emissions."

. At N.J.A.C. 7:27-31.2, in the definition of "Electric generation unit" the Department is changing the way it expresses the 15 Megawatt threshold to be consistent with the language at 40 CFR 96.4(a)(1).

. At N.J.A.C. 7:27-31.2, 31.3(g), 31.13(e), and 31.21(b), the Department has reflected the name change of the USEPA Acid Rain Division to the USEPA Clean Air Markets Division, which occurred on November 15, 1999.

. At N.J.A.C. 7:27-31.3(e), the Department is limiting the extent that allowances in the attainment reserve can be used in a manner that would prevent the total NO_x emissions from the State to exceed what the Department has committed to in the NO_x SIP Call submission to USEPA under 40 CFR 51.121.

. At N.J.A.C. 7:27-31.3(e), the Department is clarifying the second sentence regarding the allocation of allowances for the phase of the program beginning in the year 2003.

. At N.J.A.C. 7:27-31.4(n), the Department is changing the phrase "the Administrator of the NATS" to the defined term "the NATS Administrator."

. At N.J.A.C. 7:27-31.7(e)4iii(2), the Department is removing the extraneous equation that was inadvertently left in this provision when proposed. N.J.A.C. 7:27-31.7(e)4iii was proposed for changed so that no equation was referenced, but the equation was left in the provision. The

Department is removing the equation upon adoption because the equation is no longer referenced by any provision of the rule.

. At N.J.A.C. 7:27-31.7(l), the Department is amending the date by which the 2003 allowances will be allocated: from September 30, 1999 (which has already past), to the operative date of this rulemaking. Also, the Department is correcting the spelling of the company "Conectiv" within the allocation table.

. At N.J.A.C. 7:27-31.8(c), the Department is amending the provision relating to who is eligible to claim incentive allowances for energy efficiency projects that reduce electricity use. Specifically, the Department is amending the condition that the claimant must purchase its electricity from a company that owns a NOx Budget source. This provisions was put in place before electricity restructuring occurred in New Jersey, when traditional utilities were the only companies that sold electricity to customers. On February 9, 1999, the Electric Discount and Energy Competition Act was passed allowing companies other than the traditional utilities to sell electricity to consumers in New Jersey. By amending this provision, any person may claim incentive allowances if it purchases its electricity from an electricity supplier licenced in New Jersey.

. At N.J.A.C. 7:27-31.12(p), the Department is changing the phrase "the Administrator of the NATS" to the defined term "the NATS Administrator."

. At N.J.A.C. 7:27-13, the Department is reordering the provisions so that subsections (a) through (f) relate to general information about the NOx Allowance Tracking System (NATS), subsections (g) through (k) contain provisions related to authorized account representatives, subsections (l) through (o) relate to Compliance account provisions, and subsections (p) through (r) relate to general account provisions. The following table illustrates the changes in location of these provisions:

Old Location	New Location
(a) - (b)	(a) - (b)
(c)	(d)
(d)	(p)
(e)	(e)
(f) (Reserved.)	–
(g)	(g)
(h)	(l)
(i)	(m)
(j)	(c)
(k)	(j)
(l)	(h)
(m)	(i)
(n)	(k)

(o)	(n)
(p)	(f)
(q) - (r)	(q) - (r)
–	(o) (new provision)

. At N.J.A.C. 7:27-31.13(n), the Department is changing the word "section" to "subchapter."

. At N.J.A.C. 7:27-31.14(k)2i(2), 31.14(m),(n), and (o), the Department corrected punctuation errors.

. At N.J.A.C. 7:27-31.14(k), (l), (o), (p), (q), (s), and (w), the Department is inserting verbal cues that exist in the federal provisions from which these subsections were modeled. These clauses are located at the beginning of each provision and help the reader determine the topic of each of the provisions more quickly than if the clauses were omitted.

. At N.J.A.C. 7:27-31.17(c), the Department is adding the missing word "NETS" where referring to the NETS Administrator

. At N.J.A.C. 7:27-31.18(c), the Department has clarified that a form exists for the annual compliance certification and a webpage address by which the form can be obtained.

. At N.J.A.C. 7:27-31.18(c)6, the Department has altered the required certification language that must accompany a compliance certification report. These reports have been developed for use across all states participating in the NO_x Budget Program and contain a certification statement generic for all states rather than the New Jersey specific certification language specified at N.J.A.C. 7:27-1.39. The Department has therefore altered the required language so that the use of the certification language on the compliance certification form does not pose any potential violation relating to the use of such certification statement.

. Throughout the text of the rule language, the Department has corrected punctuations and related items of formatting.

Federal Standards Analysis

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L.1995,c.65) require State agencies which adopt, readopt, or amend any rule or regulation, to provide a comparison with Federal law, and to provide further discussion and analysis (including cost-benefit analysis) if the standards or requirements imposed by the agency exceed standards or requirements imposed by Federal law. The Department has reviewed the standards and requirements of the adopted amendments and new rule, and compared them with the standards and requirements imposed by the CAA and USEPA SIP Call (40 CFR 51.121 and 40 CFR 96). The Department has found that the adopted amendments do not exceed the requirements imposed by Federal law. As explained in the summary in the proposal of these amendment, most of the amendments are being proposed to align the provisions of the NO_x Budget Program rules with the Federal requirements. The other amendments do not affect the consistency of this program with Federal requirements. Accordingly, Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L.1995,c.65) do not require any further analysis.

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Full text of the adoption follows (deletions indicated in brackets with asterisks ***[**thus**]***; additions indicated in boldface with asterisks ***thus***):

7:27-31.1 Purpose and scope

This subchapter establishes a NO_x Budget Program in New Jersey which, beginning in 1999, limits emissions from stationary sources of NO_x. It sets forth requirements for the monitoring, recordkeeping, and reporting of NO_x emissions and for certification of compliance with this program. It makes available a trading mechanism, which allows intrastate trading as well as interstate trading. In order to support the trading mechanism, this subchapter establishes rules and procedures for the allocation of the tradeable units (that is, allowances); the transfer, use, and retirement of the allowances; and the tracking of the allowances. The NO_x Budget Program set forth in this subchapter is intended to confirm with and meet USEPA's NO_x Budget rules at 40 CFR 96 and meets USEPA's requirements at 40 CFR 51.121 for mitigating the interstate transport of both ozone and nitrogen oxides, a precursor to the formation of ground-level ozone.

7:27-31.2 Definitions

The following words, terms, and abbreviations used in this subchapter have the following meanings, unless the context clearly indicates otherwise:

. . .

"Account certificate of representation" means the completed and signed submission required by N.J.A.C. 7:27-31.13 for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such NO_x Budget source or sources with regard to matters under this subchapter.

. . .

"Acid Rain emissions limitation" means the term as defined at 40 CFR 72.2, which is a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the Clean Air Act.

. . .

"Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

. . .

"Allowance transfer deadline" means the deadline by which an allowance transfer request may be submitted to the NATS Administrator to effect an allowance transfer for the purpose of meeting the requirement of N.J.A.C. 7:27-31.3(i) for the year's control period. For each year from 1999 through 2002 this deadline shall be midnight December 31. For the year 2003 and each year thereafter this deadline shall be midnight November 30; except that for the year 2003 and each year thereafter, if November 30 is not a business day, then the deadline shall be midnight of the first business day after November 30.

. . .

"Authorized account representative (AAR)" means the responsible individual designated in writing by the person who holds an account. This individual (or his or her alternate) is the sole person who has the authority, on behalf of the account, to ***[**submit**]*** ***:***

1. Submit allowance transfer requests to the NATS Administrator ***[**, and to as certify**]*** ***;***

2. Certify and submit ***information required in this subchapter, including*** reports to the NATS and the NETS ***; and***

3 With respect to a budget source, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Program.

. . .

"Base budget" or "base emission budget" means the emissions budget for each control period ***as prescribed by the USEPA at 40 CFR 51.121, or*** that has been developed by applying the emission limits, jointly agreed to by the jurisdictions who are signatories of the OTC MOU, to the baseline sources' baseline emissions ***, whichever is less***. This term when used in respect to:

1. A specific ***[**OTR**]*** jurisdiction, is the emission budget so established for that jurisdiction; and
2. The ***[**OTR**]*** ***interstate trading program*** as a whole, is the sum of the emission budgets so established for all jurisdictions in the region.

. . .

"Baseline source" means a source which is one of the following and which operated during the May 1 through September 30 period in 1990:

1. A fossil fuel fired boiler or ***other*** indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour; or
2. An electric generating unit with a rated output of at least 15 MW.

. . .

"Budget source" means any of the following sources ***[**located in the OTR**]***:

1. A fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour;
2. An electric generating unit with a rated output of at least 15 MW; or
3. Any source that has been approved as an opt-in source.

. . .

"Combustion unit" means a source operation or item of equipment which combusts fuel.

"Commence commercial operation" means, with regard to a source that serves an electric generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a source that is a budget source on the date of commencement of commercial operation, the date such production begins shall remain the source's date of commencement of commercial operation even if the source is subsequently modified, reconstructed, or repowered. For a source that is not a budget source on the date the source commences commercial operation, the date the source becomes a budget source shall be the date of commencement of commercial operation, for the purposes of this subchapter.

***"Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a source, start-up of a source's combustion chamber. For a source that is**

a budget source on the date of commencement of operation, such date shall remain the source's date of commencement of operation even if the source is subsequently modified, reconstructed, or repowered. For a source that is not a budget source on the date of commencement of operation, the date the source becomes a budget source shall be the source's date of commencement of operation, for the purposes of this subchapter.*

"Common stack" means a single flue through which emissions from two or more source are exhausted.

. . .

"Continuous emission***[**s**]*** monitoring system" means a system of equipment that samples, analyzes, and determines, on a continuous basis (at least once every 15 minutes), for a given source or group of sources, mass emissions of one or more air contaminants per time period and per heat input, and that records the results in order to provide a permanent record of such data. The following are component parts of a continuous emissions monitoring system required under this subchapter:

1. Nitrogen oxides pollutant concentration monitor;
2. Diluent gas monitor (oxygen or carbon dioxide) , when use of such monitor is required by N.J.A.C. 7:27-31.14;
3. Flow monitoring systems (flue gas flow or fuel flow);
4. A continuous moisture monitor, when use of such monitor is required by N.J.A.C. 7:27-31.14; and
5. A data acquisition and handling system.

. . .

"Data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under N.J.A.C. 7:27-31.14 through 31.16, 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 N.J.A.C. 7:27-14.

. . .

"Electric generating unit" means any fossil fuel fired combustion unit ***that serves an electric generator having a nameplate capacity*** of 15 MW ***[**capacity**]*** or greater which provides electricity for sale or use. ***[**This term does not include a waste-to-electricity unit.**]***

. . .

[**"Excess emissions" means emissions of NO_x reported by a budget source during a control period which, as of the allowance transfer deadline following the control period, are greater than the emissions value of the allowances in the budget source's compliance account.**]

. . .

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties, which are under common control of the same person or persons.

. . .

"Fossil fuel fired" means fueled by *[at least 51]* ***greater than 50*** percent fossil fuel on an annual heat input basis.

. . .

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a source lacks certified monitors to report heat input. If the intension is to use appendix D of 40 CFR 75 to report heat input, this value should be calculated, in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the intension is to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR 75. using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

"Maximum potential NO_x emission rate" means the emission rate of NO_x (in pounds per MMBtu) calculated in accordance with section 3 of appendix F of 40 CFR 75, using the maximum potential NO_x concentration as defined in section 2 of appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the source except for start up, shutdown, and upsets.

. . .

"NATS Administrator" means the agency which is authorized, by New Jersey and the other jurisdictions implementing the NO_x Budget Program, to administer and operate the NATS. ***At the request of the member jurisdictions of the OTC, the United States Environmental Protection Agency's Clean Air Markets Division, formerly the Acid Rain Division, has agreed to serve as the NATS Administrator for the purposes of the OTC NO_x Budget Program during the years 1999 through 2002. The Administrator of USEPA, or its designee, is the NATS Administrator for the purposes of the NO_x Budget Program pursuant to 40 CFR 51 and 40 CFR 96 during the years 2003 and beyond. As of September 29, 2000, the USEPA Clean Air Markets Division, formerly the Acid Rain Division, has been designated by USEPA to be the NATS Administrator.***

. . .

"NETS Administrator" means the agency which is authorized, by New Jersey and the other jurisdictions implementing the NO_x Budget Program, to administer and operate the NETS. ***At the request of the member jurisdictions of the OTC, the United States Environmental Protection Agency's Clean Air Markets Division, formerly the Acid Rain Division, has agreed to serve as the NETS Administrator for the purposes of the OTC NO_x Budget Program during the years 1999 through 2002. The Administrator of USEPA, or its designee, is the NETS Administrator for the purposes of the NO_x Budget Program pursuant to 40 CFR 51 and 40 CFR 96 during the years 2003 and beyond. As of September 29, 2000, the USEPA Clean Air Markets Division, formerly the Acid Rain Division, has been designated by the USEPA to be the NETS Administrator.***

"New budget source" means, in respect to provisions of N.J.A.C. 7:27-31.7, Annual allowance allocation, a budget source that, as of May 1 of the then current year, meets all of the following three criteria:

1. - 2. (No change.)

3. For each of the years 1999 through 2002, has not yet operated for two full May 1 through September 30 periods, and for the each of the years 2003 and thereafter, has not commenced operation in order to be allocated allowances pursuant to N.J.A.C. 7:27-31.7(l) or (d)3 and 4.

. . .

"Opt-in source" means a stationary source which has been opted ***[**in**]*** ***into*** the NO_x Budget Program ***[**. If the source is located in New Jersey, this source shall have been approved**]*** pursuant to N.J.A.C. 7:27-31.4, Opt in provisions. ***[**If the source is located in another jurisdiction in the OTR, this source shall been approved pursuant to the equivalent requirements established in that jurisdiction.**]***

. . .

***"Owner" means any of the following persons:**

1. Any holder of any portion of the legal or equitable title in a source;

2. Any holder of a leasehold interest in a source;

3. Any purchaser of power from a source under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, this term shall 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, upon the revenues or income from the source; or

4. With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.*

. . .

"Person" means an individual, public or private corporation, company, international entity, institution, county, municipality, state, interstate body, the United States of America, or any agency, board, commission, employee, agent, officer, or political subdivision of a state, an interstate body, or the United States of America.

. . .

"Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the NATS Administrator.

. . .

"Ton" means 2,000 pounds.

. . .

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

"Unit operating hour" means any hour or fraction of an hour during which a source combusts any fuel.

. . .

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7:27-31.3 Applicability and general provisions

(a) (No change.)

(b) Each jurisdiction in the OTR which is implementing the NO_x Budget Program is establishing a base emission budget for the control period in each year, commencing with the year 1999. The base emission budget for New Jersey is as follows:

1. 17,340 tons of NO_x for the years 1999, 2000, 2001, and 2002; and

2. 13,022 tons of NO_x for the year 2003 and each year thereafter, unless the USEPA revises the number of allowances that could be allocated to budget sources in New Jersey pursuant to 40 CFR 51.121 to an amount less than 13,022 tons. In such case, the number of tons shall be equal to the number of allowances that USEPA assigns to New Jersey applicable to budget sources .

(c) - (d) (No change.)

(e) In the years 1999 through 2002, the Department shall allocate all the allowances comprising the base emission budget for New Jersey in accordance with N.J.A.C. 7:27-31.7, Annual allowance allocation. In the year 2003 and each year thereafter, the Department shall **[**first**]*** ***allocate no more than 8,200 allowances and shall*** reserve **[**4,822 of**]*** the ***remaining*** allowances in the base emission budget for New Jersey **[**, by transferring them into the attainment reserve account held by the Department, and shall then allocate the remainder of the allowances in the base budget (that is, 8,200 allowances)**]*** ***, in accordance with N.J.A.C. 7:27-31.7***. In the judgement of the Commissioner, the Department shall only either retire an allowance deposited in the attainment reserve or use it for any other purpose which would contribute toward the attainment or maintenance of the National Ambient Air Quality Standard for ozone in New Jersey. If the Department intends to use any allowance in the attainment reserve account for any purpose other than retirement, the Department shall publish a notice in the New Jersey Register. This notice shall provide the public an opportunity for comment regarding the intended use. This public comment period shall be at least 30 days from publication of the notice. ***In no case shall the Department use any allowance in the attainment reserve account for any purpose other than retirement if the use would cause the total State NO_x emissions to exceed the level committed to by the Department in its SIP Submission to USEPA under 40 CFR 51.121.***

(f) (No change.)

(g) Pursuant to N.J.A.C. 7:27-31.16(c), the owner or operator of each budget source located in New Jersey shall monitor the emissions of each budget source in accordance to the monitoring plan approved by the Department pursuant to N.J.A.C. 7:27-31.14, Emissions monitoring, and report the source's actual NO_x emissions during that year's control period to the NETS Administrator. **[**At the request of the member jurisdictions of the OTC, the United States Environmental Protection Agency's Acid Rain Division has agreed to serve as the NETS Administrator.**]*** Correspondence for NETS Administrator shall be addressed as follows:

ATTN: NOX BUDGET PROGRAM
United States Environmental Protection Agency
[Acid Rain Division] ***Clean Air Markets Division*** - Mail Code 6204J
401 M Street SW
Washington, DC 20460

(h) (No change.)

(i) In the year 1999 and in each year thereafter, the owner or operator of a budget source shall ensure that, by the allowance transfer deadline, the allowances which are held for the budget source in a compliance account and which are valid for use in the current year are equal to or greater than the allowances to be deducted from the account pursuant to N.J.A.C. 7:27-31.17, End-of-season reconciliation. *[The number of allowances to be deducted is equal to the total number of tons NO_x actually emitted from the budget source during that year's control period as reported pursuant to (g) above.]* An owner or operator who fails to comply with this requirement is subject to the excess emission deduction provisions at N.J.A.C. 7:27-31.19 and to the civil administrative penalties provisions at N.J.A.C. 7:27A-3.10.

(j) - (k) (No change.)

(l) Allowances are valid only for the purposes of meeting the requirements of this subchapter and cannot be used to authorize the exceedance of the limitations of a permit or of another applicable rule or regulation. ***This provision does not prohibit the use of allowances that are issued through this subchapter for the purpose of complying with the provisions of another State's rules implementing either the OTC MOU or the USEPA SIP Call at 40 CFR 51.121.***

(m) - (o) (No change.)

7:27-31.4 Opt-in provisions

(a) An owner or operator of a stationary source, that ***vents all of its NO_x emissions to one or more stacks and*** is neither a fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour nor an electric generating unit with a rated output of at least 15 MW, may request approval from the Department to opt the source into the NO_x Budget Program in accordance with the provisions of this section.

(b) (No change.)

(c) An application submitted pursuant to (b) above shall include the following information:

1. - 3. (No change.)

4. An emission monitoring plan for the source operation consistent with the requirements at N.J.A.C. 7:27-31.14;

5. - 6. (No change.)

(d) (No change.)

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(e) The Department shall not approve an application for an opt-in if:

1. The applicant fails to:

i. (No change.)

ii. Propose in the monitoring plan a method for quantifying emissions from the source of sufficient accuracy and reliability on which to base determination of the source's compliance each year with N.J.A.C. 7:27-31.3(i); ***[**or**]***

2. The proposed opt-in source is not a type of source for which an emissions monitoring plan consistent with the requirements at N.J.A.C. 7:27-31.14 can be developed ***[**.**]*** ***; or***

3. The proposed opt-in source is not operating, is shutdown, or had previously been a budget source.

(f) - (m) (No change.)

(n) Each year, prior to December 31, the Department shall provide the following information to the ***NATS*** Administrator ***[**of the NATS**]*** and to USEPA, Region II:

1. - 2. (No change.)

(o) (No change.)

(p) If an opt-in source is subsequently modified, such that it becomes either a fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour or an electric generating unit with a rated output of at least 15 MW, then the regulatory status of the source shall change as of the date of the commencement of operation of the modified source. As of that date, the source shall be a budget source, but no longer an opt-in source. Within 30 days of the date, the authorized account representative shall notify in writing the Department and the NATS Administrator of the change in the source's regulatory status. The NATS Administrator shall deduct allowances from the compliance account of the former opt-in source in a manner consistent with 40 CFR 96.87(b).

(q) Notwithstanding the provisions of this section, any person who seeks to opt a source into the NOx Budget Program so that it would become an opt-in source in the year 2003 or thereafter shall comply with 40 CFR 96.84.

7:27-31.7 Annual allowance allocation

(a) - (b) (No change.)

(c) For the years 1999, 2000, 2001, and 2002, after each control period, the Department shall allocate allowances from the New Source Reserve, the Growth Reserve, and Incentive Allowances as follows:

1. - 2. (No change.)

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3. The Department shall allocate allowances to each approved claimant for the implementation of environmentally beneficial techniques which save or generate energy as follows:

i. The Department shall allocate allowances to meet each claim which was submitted to the Department by October 30 of the current year and which has been approved by the Department pursuant to N.J.A.C. 7:27-31.8. The number of allowances to be allocated shall be calculated in accordance with the following equation:

$$\text{Allowances} = \frac{1.50}{2{,}000} \times E$$

Where:

1.50 = The rate, expressed in pounds per MW-hr, at which allowances are allocated for the implementation of environmentally beneficial techniques that result in the saving or generation of electricity;

E = The amount of saved or generated electricity, expressed in MW-hr, in the approved claim pursuant to N.J.A.C. 7:27-31.8; and

2,000 = The factor for converting pounds into tons;

ii. For the years 1999, 2000, and 2001, the Department shall allocate allowances from the next year's base emission budget for New Jersey until all claims are met; and

iii. For the year 2002, the number of allowances determined in (c)3i above shall constitute a preliminary determination of the number of allowances to be allocated to a claimant, and the following shall apply:

(1) If the sum of allowances preliminarily determined under (c)3i above to be allocated to all approved claimants is less than or equal to the total number of allowances in the Incentive Reserve for 2003, as established pursuant to (d)2 below, then the Department shall allocate a number of allowances to each of the claimants equal to that claimant's preliminary determination. If any allowances remain in the Incentive Reserve after the allowances have been allocated to all claimants, these remaining allowances shall be held in the Incentive Reserve for use in the following year; and

(2) If the sum of allowances preliminarily determined under (c)3i above to be allocated to all approved claimants is greater than the total number of allowances in the Incentive Reserve for 2003, as established pursuant to (d)2 below, then the Department shall allocate all the allowances in the 2003 Incentive Reserve and each claimant shall receive a number of allowances equal to its prorated share determined in accordance with the following equation:

$$\text{Allowances} = \frac{A_{Claim}}{A_{Total}} \times A_{Reserve}$$

Where:

A_{Claim} = The number of allowances preliminarily determined to be allocated to the claimant, as determined in (c)3i above;
A_{Total} = The sum of allowances preliminarily determined to be allocated to each of the claimants, as determined in (c)3i above; and
$A_{Reserve}$ = The number of allowances in the Incentive Reserve.

(d) For the control period in the year 2003, allowances are allocated in accordance with (l) below. For the control period in the year 2004 and in each year thereafter, the Department shall allocate allowances ***by submitting allocation information to the NATS Administrator*** by the applicable allocation deadline (that is, by April 1, 2001, for the allowances to be allocated for the 2004 control period, and by the April 1 which is three years before the beginning of each control period for each control period thereafter). Prior to the allocation deadline, the Department shall transfer ***[**4,822**]*** allowances from New Jersey's base emission budget for the control period for which allowances are being allocated into the attainment reserve account held by the Department ***, such that 8,200 allowances remain to be allocated. If the USEPA requires that allowances representing less than 8,200 tons of NO_x be allocated to budget sources in New Jersey pursuant to 40 CFR 51.121, then no allowances shall be transferred into the attainment reserve account and then all references to 8,200 allowances in N.J.A.C. 7:27-31.7(d) and (e) shall be replaced with the USEPA budget figure*** . The Department shall allocate the remaining 8,200 allowances in accordance with the following steps:

1. Step 1: Allocation to the New Source / Growth Reserve. The first purpose of this reserve is to hold aside allowances, so that they are available for distribution after the control period to new budget sources. The second purpose of this reserve is to hold aside allowances for budget sources that have low NO_x emission rates so the allowances are available for distribution after the control period to any of these low NO_x emission rates sources that emit more tons of NO_x that the number of allowances allocated for the sources for the particular control period. The Department shall allocate 820 allowances into this reserve.

2. Step 2: Allocation to the Incentive Reserve. The purpose of this reserve is to hold aside allowances so that they are available for distribution after the control period to persons who claim incentive allowances, based on their saving or generation of electricity through the implementation of certain environmentally beneficial techniques pursuant to N.J.A.C. 7:27-31.8. The Department shall allocate 410 allowances to this reserve.

3. Step 3: Except as provided in (j) below, this step is a preliminary determination of the number of allowances which are to be allocated in (d)4 (Step 4) below to each budget source that is not a new budget source or an opt-in source. In this step, the Department shall preliminarily determine the number of allowances to be allocated to each budget source that is not a new budget source or an opt-in source, in accordance with the following procedure:

   i. Calculate the average NO_x emission rate (ER_{NOx}) of the source, expressed in pounds per MMBtu, in accordance with the following equation:

$$ER_{NOx} = \frac{E1 + E2}{H1 + H2}$$

Where:

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E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input; and

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input;

ii. If the source is an industrial boiler or a process heater, the number of allowances to be allocated to the source is preliminarily determined in this step in accordance with the following procedure:

(1) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (d)3i above is greater than 0.20 pounds of NO_x per MMBtu, then the number of allowances to be allocated to the source is preliminarily determined in accordance with the following equation:

$$\text{Allowances} = \frac{0.20}{2{,}000} \times \left(\frac{H1 + H2}{2} \right)$$

Where:

0.20 = The allocation rate, expressed in pounds per MMBtu;

H1 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

H2 = The heat input, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

(2) If the average NO_x emission rate as calculated in (d)3i above is not greater than 0.20 pounds of NO_x per MMBtu, then the number of allowances to be allocated to the source is preliminarily determined in accordance with the following equations:

$$\text{Preliminary Allowances} = \frac{E_{\text{Allowable}} + E_{\text{Actual}}}{2} \qquad \text{Equation 1}$$

Where:

$E_{Allowable}$ = The average allowable emissions for the source, as determined in equation 2 below; and

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E_{Actual} = The average actual emissions for the source, as determined in equation 3 below;

$$E_{Allowable} = \frac{\sum_{i=1}^{n} (AER_i \times (H1_i + H2_i))}{2} \times \frac{1}{2{,}000}$$ Equation 2

Where:

n = The number of type of fuel burned during the two greatest heat input control periods during the last three years;

AER_i = The lesser of 0.20 pounds per MMBtu or the lowest allowable emission rate expressed in pounds per MMBtu for the source for each type of fuel burned during the two greatest heat input control periods;

$H1_i$ = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

$H2_i$ = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

$$E_{Actual} = \frac{E_1 + E_2}{2} \times \frac{1}{2{,}000}$$ Equation 3

Where:

E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons; and

iii. If the source is utilized for the purpose of electric generation alone or for the purpose of generation of a combination electricity and useful heat, the number of allowances to be allocated to the source is preliminarily determined in accordance with the following procedure:

(1) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (d)3i above is greater than 0.15 pounds of NO_x per MMBtu, then for allocating

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year 2003 and 2004 allowances, the number of allowances for the source shall be preliminarily determined in accordance with the equation at (b)4i above, and then for allocating the allowances for the year 2005 and each year thereafter, the number of allowances for the source is preliminarily determined in accordance with the following equation:

$$\text{Allowances} = \frac{1.50 \times \left(\frac{OE1 + OE2}{2}\right) + 0.44 \times \left(\frac{OS1 + OS2}{2}\right)}{2{,}000}$$

Where:

1.50 = The allocation rate, expressed in pounds per MW-hr;

OE1 = The net electric output, expressed in MW-hr, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual net electric output;

OE2 = The net electric output, expressed in MW-hr, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual net electric output;

0.44 = The allocation rate, expressed in pounds per MMBtu output, which is approximately equivalent to the allocation rate of 1.50 pounds per MW-hr;

OS1 = The net useful heat output, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual net electric output;

OS2 = The net useful heat output, expressed in MMBtu, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual net electric output; and

2,000 = The factor for converting pounds into tons; and

(2) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (d)3i above is not greater than 0.15 pounds of NO_x per MMBtu, then the number of allowances to be allocated to the source is preliminarily determined in accordance with the following equations:

$$\text{Allowances} = \frac{E_{Allowable} + E_{Actual}}{2} \qquad \text{Equation 1}$$

Where:

$E_{Allowable}$ = The average allowable emissions for the source, as determined in equation 2 below if the allowable emission rate is expressed on a heat input basis or in a similar manner if the allowable emission rate is expressed on an output basis; and

E_{Actual} = The average actual emissions for the source, as determined in equation 3 below; and

$$E_{Allowable} = \frac{\sum_{i=1}^{n} (AER_i \times (H1_i + H2_i))}{2} \times \frac{1}{2,000}$$ Equation 2

Where:

n = The number of type of fuel burned during the two greatest heat input control periods during the last three years;

AER_i = The lesser of 0.15 pounds per MMBtu or the lowest allowable emission rate expressed in pounds per MMBtu for the source for each type of fuel burned during the two greatest heat input control periods;

$H1_i$ = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

$H2_i$ = The heat input, expressed in MMBtu, for each type of fuel during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons;

$$E_{Actual} = \frac{E_1 + E_2}{2} \times \frac{1}{2,000}$$ Equation 3

Where:

E1 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the greatest actual heat input;

E2 = The total actual NO_x emissions, expressed in pounds, during the following control period: of the most recent three control periods, the control period during which the source had the second greatest actual heat input; and

2,000 = The factor for converting pounds into tons; and

4. Step 4: The Department shall allocate the remainder of the allowances as follows:

i. The sum of the following shall be determined:

(1) The number of allowances allocated to the New Source/Growth Reserve in (d)1 (Step 1) above;

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(2) The number of allowances allocated to the Incentive Reserve in (d)2 (Step 2) above;

(3) The number of allowances that have been previously allocated pursuant to (i) below, or pursuant to N.J.A.C. 7:27-31.17(h); and

(4) The number of allowances preliminarily determined in (d)3 (Step 3) above to be allocated to each budget source that is not a new budget source;

ii. If the sum in (d)4i above is less than or equal to 8,200, then the Department shall allocate allowances as follows:

(1) Allowances shall be allocated to each budget source that is not a new budget source, as preliminarily determined in (d)3 (Step 3) above; and

(2) Any remaining allowances that were not allocated in (d)1 (Step 1), (d)2 (Step 2), or (d)4ii(1) above shall be allocated to the Department's attainment reserve account; or

iii. If the sum determined in (d)4i above is greater than 8,200, then the Department shall allocate the remaining allowances to budget sources in proportion to the amount of preliminarily determined in (d)3 (Step 3) above. The proportional share to be allocated to each shall be determined as follows:

$$\text{Allowances} = \frac{8{,}200 - A0 - A1 - A2}{PA_{Total}} \times PA$$

Where:

A0 = The total number of allowances that have been previously allocated pursuant to (i) below or pursuant to N.J.A.C. 7:27-31.17(h)

A1 = The total number of allowances allocated to the New Source Reserve in (d)1 (Step 1) above;

A2 = The total number of allowances allocated to the Growth Reserve in (d)2 (Step 2) above;

PA = The number of allowances preliminarily determined for allocation to the source as determined in (d)3 (Step 3) above; and

PA_{Total} = The sum of all allowances preliminarily determined for allocation to all budget sources in (d)3 (Step 3) above.

(e) For the control period of the year 2003 and of each year thereafter, the Department shall allocate allowances from the New Source/Growth Reserve, and Incentive Allowances ***by submitting allocation information to the NATS Administrator*** as follows:

1. The Department shall preliminarily determine the number of allowances to be allocated from the New Source/Growth Reserve as follows:

i. For any new budget source, the Department shall preliminarily determine the number of allowances to be allocated to each new source from the New

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Source/Growth Reserve. This number shall equal the number of tons of NO_x emitted by the source during the control period, unless the emissions exceed:

(1) (No change.)

(2) For a source that is not an industrial boiler nor a process heater, the lesser of 0.15 lb/MMBtu or the lowest allowable emissions limit during the control period, in which case the allowances allocated to the source will be reduced by difference between the actual NO_x emission and the emissions at the lesser of the allowable emission rate or 0.15 lb/MMBtu during the period in which the source exceeded this condition within the control period;

ii. For any eligible budget source, if the number of tons of the source's NO_x emissions during the past control period was greater than the number of allowances allocated for the source for that control period, then the Department shall preliminarily determine the number of allowances to be allocated to the source from the New Source/Growth Reserve . Under this subparagraph the budget sources that are eligible are industrial boilers or process heaters that emitted NO_x at a rate less than or equal to 0.20 pounds per MMBtu heat input and other budget sources that emitted NO_x at a rate less than or equal to 0.15 pounds per MMBtu heat input, except that no new source and no opt-in source is eligible. The preliminary number of allowances shall be determined in accordance with the following procedure:

(1) (No change.)

(2) If the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (e)2i(1) above is greater than 0.20 pounds per MMBtu for industrial boilers or process heaters or 0.15 pounds per MMBtu for any other budget source, then the Department shall allocate no allowances from the New Source/Growth Reserve to the budget source;

(3) If the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (e)2i(1) above is not greater than 0.20 pounds per MMBtu for industrial boilers or process heaters or 0.15 pounds per MMBtu for any other budget source, and if the actual emissions during the control period is greater than the number of allowances allocated to the source pursuant to (d)4ii(1) or (d)4iii above, then the Department shall determine the preliminary number of allowances from the New Source/Growth Reserve to the budget source to be allocated in accordance with the following equation:

$$\text{Allowances} = E_{Actual} - A$$

Where:

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E_{Actual} = The total NO_x emissions, expressed in tons, of the source during the control period, minus any emissions due to the exceedance of an applicable maximum allowable emissions limit; and

A = The number of allowances that had been allocated to the source pursuant to (d)4ii(1) or (d)4iii above;

2. The Department shall allocate allowances from the New Source/Growth Reserve after October 30 and before the allowance transfer deadline following the current year's control period as follows:

i. If the sum of all allowances preliminarily determined to be allocated from the New Source/Growth Reserve under(e)1 above is less than or equal to the number of allowances contained in the reserve, then the Department shall allocate the number of allowances to each source equal to the number of allowances preliminarily determined to be allocated to that source;

ii. If there are allowances left in the New Source/Growth Reserve after distributing the allowances in accordance with (e)2i above, then the Department shall allocate the remaining allowances in accordance with (e)4 below;

iii. If the sum of allowances preliminarily determined in accordance with (e)1 above to be allocated to sources from the New Source/ Growth Reserve is greater than the number of allowances contained in the reserve, then the Department shall allocate all the allowances in the reserve, and each source shall receive a number of allowances equal to its prorated share determined in accordance with the following equation:

$$\text{Allowances} = \frac{A_{Source}}{A_{Total}} \times A_{Reserve}$$

Where:

A_{Source} = The number of allowances preliminarily determined to be allocated to the source, as determined in (e)1 above;

A_{Total} = The total number of allowances preliminarily determined to be allocated to all sources, as determined in (e)1 above; and

$A_{Reserve}$ = The number of allowances in the New Source/Growth Reserve;

3. The Department shall allocate the allowances from the Incentive Reserve for the implementation of environmentally beneficial techniques which save or generate energy as follows:

i. The Department shall preliminarily determine the number of allowances to be allocated to each claimant who submitted to the Department by October 30 of the current year which has been approved by the Department pursuant to N.J.A.C. 7:27-31.8 . This number shall be determined in accordance with the following equation:

$$\text{Allowances} = \frac{1.50}{2{,}000} \times E$$

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Where:

1.50 = The rate, expressed in pounds per MW-hr, at which allowances are allocated for the implementation of environmentally beneficial techniques that result in the saving or generation of electricity;

E = The amount of saved or generated electricity, expressed in MW-hr, in the approved claim; and

2,000 = The factor for converting pounds into tons;

ii. If the sum of all allowances preliminarily determined to be allocated to claimants from the Incentive Reserve under (e)3i above is less than or equal to the number of allowances in the reserve, then the Department shall allocate to each claimant, the number of allowances preliminarily determined to be allocated to that claimant;

iii. If there are allowances left in the Incentive Reserve after distributing the allowances in accordance with (e)3ii above, then the Department shall allocate such allowances in accordance with (e)4 below;

iv. If the sum of all allowances preliminarily determined to be allocated to claimants from the Incentive Reserve under (e)3i above is greater than the number of allowances in the reserve, then the Department shall allocate all allowances in the reserve and each claimant shall receive a number of allowances equal to its prorated share determined in accordance with the following equation:

$$\text{Allowances} = \frac{A_{Claim}}{A_{Total}} \times A_{Reserve}$$

Where:

A_{Claim} = The number of allowances preliminarily determined to be allocated to the claimant under(e)3i above;

A_{Total} = The total number of allowances preliminarily determined to be allocated to all claimants in (e)3i above; and

$A_{Reserve}$ = The number of allowances in the Incentive Reserve;

4. If there are any allowances remaining in the New Source Reserve/Growth Reserve and/or the Incentive Reserve, after allowances are allocated in accordance with (e)1 through 3 above, the Department shall allocate the remaining allowances in accordance with the following procedure:

i. If there are allowances remaining in the Incentive Reserve after the allowances are allocated in accordance with (e)3 above, and if the number of allowances in the New Source/Growth Reserve were less than the total number of allowances preliminarily determined to be allocated under (e)1 above for the current year's control period, then the Department shall allocate allowances remaining in the Incentive Reserve to the sources being allocated allowances from the New Source/Growth Reserve. The number of allowances to be allocated to each source shall be proportional to the number that each source was underallocated, relative to the number of preliminarily determined allowances under (e)1, until the remaining allowances in the Incentive Reserve have all been allocated or until each source is

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no longer underallocated, whichever comes first. Any remaining allowances left in the Incentive Reserve after this procedure takes place shall be allocated pursuant to (e)4iii below.

ii. If there are allowances remaining in the New Source/Growth Reserve after the allowances are allocated in accordance with (e)2 above, and if the number of allowances in the Incentive Reserve were less that the total number of allowances preliminarily determined to be allocated to claimants under (e)3 above for the current year's control period, then the Department shall allocate allowances remaining in the New Source/Growth Reserve to the claimants being allocated allowances from the Incentive Reserve. The number of allowances to be allocated to each claimant shall be proportional to the number of allowances that each claimant was underallocated, relative to the number preliminarily determined to be allocated to the claimant under (e)3i above, until the remaining allowances in the New Source/Growth Reserve have all been allocated or until each claimant is no longer underallocated, whichever comes first. Any remaining allowances left in the New Source/Growth Reserve after this procedure takes place shall be allocated pursuant to (e)4iii below.

iii. The Department shall allocate any allowances remaining in the two reserves as follows:

(1) If the sum determined at (d)4i is greater than 8,200 allowances, then the Department shall allocate allowances remaining in the reserves to budget sources. The number of allowances to be allocated to each budget source shall be proportional to the number that each source was underallocated, relative to the number preliminarily determined to be allocated to the source under (d)3, until the remaining allowances in the reserves have all been allocated or until each source is no longer underallocated, whichever comes first. Any remaining allowances left in the reserves after this procedure takes place shall be allocated pursuant to (e)4iii(2) below; and

(2) Any allowances remaining in the reserves that have not been allocated under (d)4iii(1) above shall be remain in the Incentive Reserve or the New Source/Growth Reserve to be available for allocation in the next year.

$$*\left[\text{Allowances} = \frac{A_R}{PA_{Total}} \times PA\right]*$$

*[Where:

A_R = The total number of allowances remaining in the two reserves;

PA = The number of allowances preliminarily determined in the most recent allocation process for allocation to the source in (d)3 above; and

PA_{Total} = The total number of allowances preliminary determined in the most recent allocation process for allocation to all budget sources in (d)3 above; and]*

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(f) The procedures of this subsection, and not those in (c) and (d) above, shall govern the allocation of allowances to opt-in sources. Each year, beginning in the year 1999, the Department shall allocate a number of allowances prior to the control period into the compliance account of each opt-in source equal to the amount of allowances added to the New Jersey emission budget to accommodate the opt-in source pursuant to N.J.A.C. 7:27-31.4, Opt-in provisions. As of ***[**(the operative date of these amendments)**]*** ***September 29, 2000***, the Department shall allocate allowances to opt-in sources up to three years in advance of each control period. However, if the productivity of the source is curtailed during the control period, then a number of allowances shall be deducted accordingly from the source's compliance account during the end-of-season reconciliation process and be permanently retired, pursuant to N.J.A.C. 7:27-31.17(g)3.

(g) (No change.)

(h) In the computations at (b)5ii(2), (b)5iii, (c)1ii, (c)2ii, (c)2iii, (d)4iii, (e)2iii, (e)4ii, and (e)4iii(1), above to determine the number of whole allowances to be allocated or distributed, individual quantities of allowances with the highest decimals shall be rounded up and the remaining quantities of allowances with lower decimals shall be rounded down, such that the total amount of allowances allocated or distributed under the provision equals the total number of allowances available.

(i) (No change.)

(j) Notwithstanding the provisions of (d) and (e) above, as of ***[**(operative date of these amendments)**]*** ***September 29, 2000,*** the Department shall not allocate any allowances to a budget source that is no longer in operation at the time that allowances are being allocated.

(k) Notwithstanding the provisions of (b)2i, (b)2iii, (b)4i, (b)4ii(1), (d)3i and (d)3ii, for the purpose of preliminarily determining the number of allowances to be allocated to a budget source, any two control periods in the last three years may be used (not just the two control periods in which the source used the most fuel). provided that the source's Authorized Account Representative submits a designation of the two periods to be used to the Department at least 60 days prior to the applicable allocation deadline. If two alternate control periods are designated, the Department shall use both the source's actual NO_x emissions and the source's heat input from those two periods in preliminarily determining the number of allowances to be allocated to the budget source.

(l) By ***[**September 30, 1999**]*** ***September 29, 2000***, the Department shall allocate allowances for the control period of the year 2003 ***by submitting allocation information to the NATS Administrator*** in accordance with the following table:

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NATS UNIT ACCOUNT *	COMPANY	PLANT	DESCRIPTION	ALLOWANCES
	NJDEP		Incentive Reserve	410
	NJDEP		Growth/New Source Reserve	820
2378000001	CON*[N]*ECTIV	B.L. ENGLAND	BLE - UNIT #1	268
2378000002	CON*[N]*ECTIV	B.L. ENGLAND	BLE - UNIT #2	340
2378000003	CON*[N]*ECTIV	B.L. ENGLAND	BLE - UNIT #3	99
2379002001	CON*[N]*ECTIV	CARLL'S CORNER STATION	CARLLS CORNER CT#1	5
2379003001	CON*[N]*ECTIV	CARLL'S CORNER STATION	CARLLS CORNER CT#2	11
2380002001	CON*[N]*ECTIV	CEDAR STATION	WEST GENERATOR ON CEDAR #1 TURBINE	1
2380003001	CON*[N]*ECTIV	CEDAR STATION	EAST GENERATOR ON CEDAR #1 TURBINE	1
2380004001	CON*[N]*ECTIV	CEDAR STATION	CEDAR #2 TURBINE	3
2382003001	CON*[N]*ECTIV	MIDDLE ST	MIDDLE CT #1	3
2382004001	CON*[N]*ECTIV	MIDDLE ST	MIDDLE CT #2	2
2382005001	CON*[N]*ECTIV	MIDDLE ST	MIDDLE CT #3	4
2383010001	CON*[N]*ECTIV	MISSOURI	MISSOURI AV. CT #B	2
2383011001	CON*[N]*ECTIV	MISSOURI	MISSOURI AV. CT #C	2
2383012001	CON*[N]*ECTIV	MISSOURI	MISSOURI AV. CT #D	2
2384000001	CON*[N]*ECTIV	DEEPWATER	DW BOILER #1	37
2384000004	CON*[N]*ECTIV	DEEPWATER	DW - BOILER #4	4
2384000006	CON*[N]*ECTIV	DEEPWATER	B&W BOILER #6	1
2384000008	CON*[N]*ECTIV	DEEPWATER	DW BOILER # 8	170
2384009001	CON*[N]*ECTIV	DEEPWATER	DW CT A	5
2385000004	GPU	WERNER GE	Unit 4 (B & W Boiler)	2
2385009001	GPU	WERNER GE	Turbine (501AA) CT#1	7
2385010001	GPU	WERNER GE	Turbine (501AA) CT#2	7
2385011001	GPU	WERNER GE	Turbine (501AA) CT#3	7
2385012001	GPU	WERNER GE	Turbine (501AA) CT#4	6
2390000007	GPU	SAYREVILLE	Unit 7, Cyclone (#6 FUEL)	20
2390000008	GPU	SAYREVILLE	Unit 8, Cyclone (#6 FUEL)	26
2390012001	GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-4	12
2390014001	GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-3	8
2390015001	GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-2	8
2390016001	GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-1	14
2393000003	GPU	GILBERT	Boiler 3	13
2393000004	GPU	GILBERT	C/C STAG 4 GT	52
2393000005	GPU	GILBERT	C/C STAG 5 GT	47
2393000006	GPU	GILBERT	C/C STAG 6 GT	50
2393000007	GPU	GILBERT	C/C STAG 7 GT	51
2393000009	GPU	GILBERT	CT 9	35
2393015001	GPU	GILBERT	C-1 GT (CT 251)	2

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2393016001	GPU	GILBERT	C-2 GT (CT251)	2
2393017001	GPU	GILBERT	C-3 GT (CT251)	2
2393018001	GPU	GILBERT	C-4 GT (CT251)	3
002397A01001	PSE&G	BAYONNE	UNIT NO. 1 (GAS TURBINE)	1
002397A02001	PSE&G	BAYONNE	UNIT NO. 2 (GAS TURBINE)	1
2398001101	PSE&G	BERGEN	UNIT NO. 1-1101 (GAS TURBINE)	39
2398001201	PSE&G	BERGEN	UNIT NO. 1-1201 (GAS TURBINE)	49
2398001301	PSE&G	BERGEN	UNIT NO. 1-1301 (GAS TURBINE)	38
2398001401	PSE&G	BERGEN	UNIT NO. 1-1401 (GAS TURBINE)	39
2398003001	PSE&G	BERGEN	UNIT NO. 3 (GAS TURBINE)	1
2399000101	PSE&G	BURLINGTON	UNIT NO. 10-1 (GAS TURBINE)	4
2399000102	PSE&G	BURLINGTON	UNIT NO. 10-2 (GAS TURBINE)	5
2399000103	PSE&G	BURLINGTON	UNIT NO. 10-3 (GAS TURBINE)	5
2399000104	PSE&G	BURLINGTON	UNIT NO. 10-4 (GAS TURBINE)	6
2399004001	PSE&G	BURLINGTON	UNIT NO. 8 (GAS TURBINE)	1
2399012001	PSE&G	BURLINGTON	UNIT NO. 9-1A&B (GAS TURBINE) NJ Stack IDs 12 and 13	3
2399014001	PSE&G	BURLINGTON	UNIT NO. 9-2A&B (GAS TURBINE) NJ Stack IDs 14 and 15	3
2399016001	PSE&G	BURLINGTON	UNIT NO. 9-3A&B (GAS TURBINE) NJ Stack IDs 16 and 17	3
2399018001	PSE&G	BURLINGTON	UNIT NO. 9-4A&B (GAS TURBINE) NJ Stack IDs 18 and 19	3
2399028001	PSE&G	BURLINGTON	UNIT NO. 11-1A&B (GAS TURBINE) NJ Stack IDs 28 and 29	2
2399030001	PSE&G	BURLINGTON	UNIT NO. 11-2A&B (GAS TURBINE) NJ Stack IDs 30 and 31	2
2399032001	PSE&G	BURLINGTON	UNIT NO. 11-3A&B (GAS TURBINE) NJ Stack IDs 32 and 33	2
2399034001	PSE&G	BURLINGTON	UNIT NO. 11-4A&B (GAS TURBINE) NJ Stack IDs 34 and 35	2
2400001001	PSE&G	EDISON	UNIT NO. 1-1A&B (GAS TURBINE) NJ Stack IDs 1 and 2	3
2400003001	PSE&G	EDISON	UNIT NO. 1-2A&B (GAS TURBINE) NJ Stack IDs 3 and 4	3
2400005001	PSE&G	EDISON	UNIT NO. 1-3A&B (GAS TURBINE) NJ Stack IDs 5 and 6	3
2400007001	PSE&G	EDISON	UNIT NO. 1-4A&B (GAS TURBINE) NJ Stack IDs 7 and 8	3
2400009001	PSE&G	EDISON	UNIT NO. 2-1A&B (GAS TURBINE) NJ Stack IDs 9 an 10	6
2400011001	PSE&G	EDISON	UNIT NO. 2-2A&B (GAS TURBINE) NJ Stack IDs 11 and 12	6
2400013001	PSE&G	EDISON	UNIT NO. 2-3A&B (GAS TURBINE) NJ Stack IDs 13 and 14	6
2400015001	PSE&G	EDISON	UNIT NO. 2-4A&B (GAS TURBINE) NJ Stack IDs 15 and 16	6
2400017001	PSE&G	EDISON	UNIT NO. 3-1A&B (GAS TURBINE) NJ Stack IDs 17 and 18	6
2400019001	PSE&G	EDISON	UNIT NO. 3-2A&B (GAS TURBINE) NJ Stack IDs 19 and 20	6
2400021001	PSE&G	EDISON	UNIT NO. 3-3A&B (GAS TURBINE) NJ Stack IDs 21 and 22	6
2400023001	PSE&G	EDISON	UNIT NO. 3-4A&B (GAS TURBINE) NJ Stack IDs 23 and 24	6
2401002001	PSE&G	ESSEX	UNIT NO. 10-1A&B (GAS TURBINE) NJ Stack IDs 2 and 3	6
2401004001	PSE&G	ESSEX	UNIT NO. 10-2A&B (GAS TURBINE) NJ Stack IDs 4 and 7	6
2401010001	PSE&G	ESSEX	UNIT NO. 10-3A&B (GAS TURBINE) NJ Stack IDs 10 and 11	6
2401012001	PSE&G	ESSEX	UNIT NO. 10-4A&B (GAS TURBINE) NJ Stack IDs 12 and 13	6

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2401014001	PSE&G	ESSEX	UNIT NO. 11-1A&B (GAS TURBINE) NJ Stack IDs 14 and 15	5
2401016001	PSE&G	ESSEX	UNIT NO. 11-2A&B (GAS TURBINE) NJ Stack IDs 16 and 17	5
2401018001	PSE&G	ESSEX	UNIT NO. 11-3A&B (GAS TURBINE) NJ Stack IDs 18 and 19	5
2401020001	PSE&G	ESSEX	UNIT NO. 11-4A&B (GAS TURBINE) NJ Stack IDs 20 and 21	5
2401022001	PSE&G	ESSEX	UNIT NO. 12-1A&B (GAS TURBINE) NJ Stack IDs 22 and 23	10
2401024001	PSE&G	ESSEX	UNIT NO. 12-2A&B (GAS TURBINE) NJ Stack IDs 24 and 25	10
2401026001	PSE&G	ESSEX	UNIT NO. 12-3A&B (GAS TURBINE) NJ Stack IDs 26 and 27	10
2401028001	PSE&G	ESSEX	UNIT NO. 12-4A&B (GAS TURBINE) NJ Stack IDs 28 and 29	10
2401035001	PSE&G	ESSEX	UNIT NO. 9 (GAS TURBINE)	29
2403000001	PSE&G	HUDSON	UNIT NO. 1 (BOILER)	130
2403000002	PSE&G	HUDSON	UNIT NO. 2 (BOILER)	738
2403008001	PSE&G	HUDSON	UNIT NO. 3 (GAS TURBINE) Module 1,2,3,4 A+B Engines NJ Source IDs 1 through 8	3
2404000007	PSE&G	KEARNY	UNIT NO. 7 (BOILER)	23
2404000008	PSE&G	KEARNY	UNIT NO. 8 (BOILER)	8
2404005001	PSE&G	KEARNY	UNIT NO. 12-1A&B (GAS TURBINE) NJ Stack IDs 5 and 6	2
2404007001	PSE&G	KEARNY	UNIT NO. 12-2A&B (GAS TURBINE) NJ Stack IDs 7 and 8	2
2404009001	PSE&G	KEARNY	UNIT NO. 12-3A&B (GAS TURBINE) NJ Stack IDs 8 and 10	2
2404011001	PSE&G	KEARNY	UNIT NO. 12-4A&B (GAS TURBINE) NJ Stack IDs 11 and 12	2
2404015001	PSE&G	KEARNY	UNIT NO. 9 (GAS TURBINE)	2
2404016001	PSE&G	KEARNY	UNIT NO. 10 (GAS TURBINE) Module 1,2,3,4 A&B Engines NJ Source IDs 1 through 8	6
2404017001	PSE&G	KEARNY	UNIT NO. 11-(GAS TURBINE) Module 1,2,3,4 A&B Engines NJ Source IDs 1 through 8	11
2406000002	PSE&G	LINDEN	UNIT NO. 2-1 & 2-2 (BOILER)	27
2406000007	PSE&G	LINDEN	UNIT NO. 7 (GAS TURBINE)	14
2406000008	PSE&G	LINDEN	UNIT NO. 8 (GAS TURBINE)	16
2406000012	PSE&G	LINDEN	UNIT NO. 1-2 (BOILER)	5
2406000013	PSE&G	LINDEN	UNIT NO. 1-3 (BOILER)	8
2406007001	PSE&G	LINDEN	UNIT NO. 3 (GAS TURBINE)	2
2406008001	PSE&G	LINDEN	UNIT NO. 5 (GAS TURBINE)	2
2406009001	PSE&G	LINDEN	UNIT NO. 6 (GAS TURBINE)	2
2408000001	PSE&G	MERCER	UNIT NO. 1 (BOILER)	425
2408000002	PSE&G	MERCER	UNIT NO. 2 (BOILER)	485
2408007001	PSE&G	MERCER	UNIT NO. 3 (GAS TURBINE) Module 1,2,3,4 A&B Engines NJ Source IDs 1 through 8	1
2410002001	PSE&G	SALEM	UNIT NO. 3A&B (GAS TURBINE) NJ Stack IDs 2 and 3	3
2411000001	PSE&G	SEAWAREN	UNIT NO. 1 (BOILER)	27
2411000002	PSE&G	SEAWAREN	UNIT NO. 2 (BOILER)	25
2411000003	PSE&G	SEAWAREN	UNIT NO. 3 (BOILER)	33

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2411000004	PSE&G	SEAWAREN	UNIT NO. 4 (BOILER)	56
2411012001	PSE&G	SEAWAREN	UNIT NO. 6 (GAS TURBINE) Module 1-4 A+B Engines NJ Stack IDs 12 through 19	1
2434005001	VINELAND MEU	HOWARD M	BOILER #9-COMBUSTION ENG. 180000 LB/HR 1	9
2434006001	VINELAND MEU	HOWARD M	COMBUSTION OF FOSSILE FUEL UTILIBOILER-E	26
5083004001	CON*[N]*ECTIV	CUMBERLAND	CUMBERLAND - C.T. #1	8
6776002001	VINELAND MEU	WEST STAT	COMBUSTION TURBINE WESTINGHOUSE S/N17A-2	7
7138002001	GPU	FORKED RIVER	CT-1	12
7138003001	GPU	FORKED RIVER	CT-2	13
7288000001	CON*[N]*ECTIV	SHERMAN AV STATION	SHERMAN - C.T. #1	25
8008001001	CON*[N]*ECTIV	MICKELTON	MICKELTON CT	10
8227003001	GPU	GLEN GARDNER	A1 CT (JET TURBINE)	4
8227004001	GPU	GLEN GARDNER	A2 CT (JET TURBINE)	4
8227005001	GPU	GLEN GARDNER	A3 CT (JET TURBINE)	4
8227006001	GPU	GLEN GARDNER	A4 CT (JET TURBINE)	4
8227007001	GPU	GLEN GARDNER	B5 CT (JET TURBINE)	5
8227008001	GPU	GLEN GARDNER	B6 CT (JET TURBINE)	5
8227009001	GPU	GLEN GARDNER	B7 CT (JET TURBINE)	4
8227010001	GPU	GLEN GARDNER	B8 CT (JET TURBINE)	4
10043001001	*[US GENERATING - LOGAN]* ***LOGAN GENERATING COMPANY, L. P.***	LOGAN GENERATING PLANT	PULVERIZED COAL FIRED	358
10099001001	CON*[N]*ECTIV	PEDRICKTOWN COGEN	GENERAL ELECTRIC FRAME 7EA GAS TURBINE	26
10308001001	NORTH JERSEY ENERGY ASSOCIATES		CT-1 COMBUSTION TURBINE	167
10308001002	NORTH JERSEY ENERGY ASSOCIATES		CT-2 COMBUSTION TURBINE	172
10566001001	*[US GENERATING - CP]* ***CHAMBERS COGENERATION L. P.***	CARNEY'S POINT *[GENERATING]* PLANT	PC BOILER 2	203
10566002001	*[US GENERATING - CP]* ***CHAMBERS COGENERATION L. P.***	CARNEY'S POINT *[GENERATING]* PLANT	PC BOILER 1	204
10616001001	KAMINE/MILFORD	MILFORD	COMBUSTION TURBINE	91
10616001002	KAMINE/MILFORD	MILFORD	DUCT BURNER	4
10751002001	COGEN TECHNOLOGIES	CAMDEN	GENERAL ELECTRIC FRAME 7 EA.	66
10805002001	KENILWORTH/SITHE	EF KENILWORTH	GAS TURBINE NATURAL GAS	54
50006005001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.500 & DB	39
50006006001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.400 & DB	38
50006007001	COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.300 & DB	39

This adoption has been filed with the Office of Administrative Law, which will edit it before publishing it in the New Jersey Register. Please refer to the August 21, 2000, New Jersey Register for the official text of the adoption.

NATS UNIT ACCOUNT	*	COMPANY	PLANT	DESCRIPTION	ALLOWANCES
50006008001		COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.200 & DB	40
50006009001		COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.100 & DB	39
50385001001		NEWARK BAY COGEN	NEWARK BAY COGEN	GAS TURBINE GENERATOR WITH WASTEHEAT STE	21
50385002001		NEWARK BAY COGEN	NEWARK BAY COGEN	GAS TURBINE GENERATOR WITH WASTEHEAT STE	21
50497001001		COGEN TECHNOLOGIES	BAYONNE	GT/HRSG #1 EXHAUST STACK	26
50497002001		COGEN TECHNOLOGIES	BAYONNE	GT/HRSG NO.2 EXHAUST STACK	27
50497004001		COGEN TECHNOLOGIES	BAYONNE	GT/HRSG NO.3 EXHAUST STACK	26
50561001001		COASTAL EPCP	EAGLE POINT COGEN	CT A	161
50561001002		COASTAL EPCP	EAGLE POINT COGEN	DB A	21
50561002001		COASTAL EPCP	EAGLE POINT COGEN	CT B	161
50561002002		COASTAL EPCP	EAGLE POINT COGEN	DB B	21
50561086001		COASTAL Eagle Point	WESTVILLE REFINERY	ONE FW WATER WALL BOX BOILER	62
50561087001		COASTAL Eagle Point	WESTVILLE REFINERY	ONE FW WATER WALL BOX BOILER	67
50561088001	*	COASTAL Eagle Point	WESTVILLE REFINERY	PROCESS HEATER	36
50628748001		VALERO (MOBIL)	PAULSBORO	STEAM BOILER #1	36
50628749001		VALERO (MOBIL)	PAULSBORO	GAS TURBINE	67
50628749002		VALERO (MOBIL)	PAULSBORO	DUCT BURNER	44
50628751001		VALERO (MOBIL)	PAULSBORO	STEAM BOILER #2	35
50628752001		VALERO (MOBIL)	PAULSBORO	STEAM BOILER #	37
50797001001		CogenAmerica	NEWARK	COGEN	56
50799001001		CogenAmerica	PARLIN	40 MW GAS FIRED TURBINE #2	19
50799003001		CogenAmerica	PARLIN	40 MW GAS FIRED TURBINE #1	18
50852002001		PRIME ENERGY	ELMWOOD E	COGENERATION SYSTEM	106
54416189001		ROCHE VITAMINS	BELVIDERE	COGENERATION & DB	91
54640001001		CNG LAKEWOOD	CNG LAKEWOOD	GAS TURBINE GENERATOR #1	16
54640002001		CNG LAKEWOOD	CNG LAKEWOOD	GAS TURBINE GENERATOR #2	16
54807001001		CON*[N]*ECTIV	VINELAND COGEN	GENERAL ELECTRIC LM6000 GAS TURBINE	7
880016010001	*	TOSCO (BAYWAY)		F701 - NO.7 ATMOSPHERIC PIPESTILL FURNACE	129
880016010003	*	TOSCO (BAYWAY)		F702 - NO.7 PIPESTILL OUTBOARD FLASHTOWER FURNACE	137
880016A03001	*	TOSCO (BAYWAY)		F251 - CAT PLANT FEED PREHEAT FURNACE	45
TOTAL					8200

* = considered a process heater in the calculation

This adoption has been filed with the Office of Administrative Law, which will edit it before publishing it in the New Jersey Register. Please refer to the August 21, 2000, New Jersey Register for the official text of the adoption.

7:27-31.8 Claims for incentive reserve allowances

(a) - (b) (No change.)

(c) The following persons are eligible to submit a claim for incentive allowances:

1. A New Jersey electric consumer who:

i. Purchases its electricity from ***[**a company which owns a NO_x Budget source located**]*** ****an electricity suppler licenced**** in New Jersey; and

ii. (No change.)

2. - 3. (No change.)

(d) - (i) (No change.)

7:27-31.9 Permits

(a) The owner or operator of a budget source shall ensure that the operating permit issued under N.J.A.C. 7:27-22 which applies to the budget source shall incorporate all applicable requirements and provisions of this subchapter, including but not limited to the following:

1. The requirement at N.J.A.C. 7:27-31.3(i) to have, by the allowance transfer deadline, a number of allowances in a budget source's compliance account which is at least equal, in emissions value, to the NO_x emissions of the source during the current year control period;

2. - 3. (No change.)

(b) - (f) (No change.)

(g) The owner or operator of a budget source required to obtain an operating permit pursuant to N.J.A.C. 7:27-22 shall comply with (a) above when applying for renewal of the operating permit.

7:27-31.10 Allowance use, transfer and retirement

(a) - (b) (No change.)

(c) At any time between the end of the reconciliation process and the allowance transfer deadline during any year, an authorized account representative may authorize the transfer of one or more allowances from the represented account to another account. During the period between the day after the allowance transfer deadline and the end of the reconciliation process, only allowances that are incapable of being used during such reconciliation process may be transferred. The only allowances that are effectively frozen during the reconciliation period are those allowances in compliance accounts that have serial numbers indicating that they could be used during the ongoing reconciliation process. Such a transaction is initiated by the submission of an allowance transfer request to the NATS Administrator in accordance with (d) below. Such transfers of allowances are voluntary actions on the part of authorized account representatives and reflect that:

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1. - 2. (No change.)

(d) The following procedures shall be carried out to effect an allowance transfer:

1. - 2. (No change.)

3. The transfer request shall include a statement of certification which must be signed by the AAR for the originating account. This statement of certification shall be:

i. Until the NATS Administration provides a revised form for use for the years 2003 and thereafter: "I am authorized to make this submission on behalf of the owners and operators of the budget source (or in the case of general accounts, the parties with an ownership interest in the allowances held in the account) and I hereby certify under penalty of law, that I have personally examined the foregoing and am familiar with the information contained in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment"; or

ii. Once the NATS Administrator provides the revised form, the certification statement provided on the revised form.

4. - 5. (No change.)

(e) Transfer requests shall be processed by the NATS Administrator in order of receipt. Within five business days of receiving a NO_x allowance transfer request, except as provided in (f) below, the NATS Administrator will record the NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted in accordance with the procedures set forth in (d) above;

2. Each NO_x allowance identified by serial number in the transfer request is in the transferor's account; and

3. The transfer meets all other applicable requirements of this subchapter.

(f) If a NO_x allowance transfer request submitted to the NATS Administrator fails to meet the requirements of (d) above, the NATS Administrator shall not record the transfer. Also, the NATS Administrator shall not record a transfer until after the reconciliation process has been completed, if the NO_x allowance transfer request is submitted on or after the NO_x allowance transfer deadline and the request includes any NO_x allowance which was allocated for the prior year's control period or for the control period for the current year (that is, the control period to which the NO_x allowance transfer deadline applies).

(g) (No change.)

(h) The NATS Administrator shall provide notification of the transfer within five business days of its recording of the transfer to the AAR of the originating account, to the AAR of the acquiring account, and to the Department. Within 10 business days of receipt of a NO_x allowance transfer request that

fails to meet the requirements of (d) above, the NATS Administrator shall notify the NO_x authorized account representatives of both the originating and acquiring accounts of its decision not to record the transfer and the reasons for this decision.

(i) - (j) (No change.)

(k) This section allows the interstate and interjurisdictional transfer of allowances. However, the transfer of an allowance initially allocated by the Department pursuant to N.J.A.C. 7:27-31.7 to the compliance account of a budget source located in another jurisdiction is prohibited, until the other jurisdiction has also adopted rules which allow the interstate trading of allowances and is implementing a NO_x Budget Program, in a manner consistent with the agreements in the OTC MOU or consistent with USEPA's NO_x SIP Call. NO_x allowances allocated by other jurisdictions may be used to comply with this subchapter, provided the other jurisdiction has adopted and implemented a NO_x allowance program consistent with this subchapter as determined by the Department ***and the USEPA*** .

(l) At any time between January 31 and December 31 during any year, a person who holds an allowance in an account may elect to permanently retire that allowance. In order to permanently retire one or more allowances, the AAR of the account in which the allowance is held shall submit to the NATS Administrator a retirement request ***, that is, a request to transfer the allowance to a retirement account*** . A retirement request shall conform to the same procedures for a transfer request given at (c) above. The NATS Administrator shall process the retirement request following the same procedures as set forth for transfer requests at (d) through (i) above.

7:27-31.11 Allowance Banking

(a) (No change.)

(b) Each year the NATS Administrator shall flag allowances that remain in an account as of the allowance transfer deadline as "banked" allowances.

(c) By March 1 of the years 2000 through 2003 inclusive, and by May 1 of the year 2004 and each year thereafter , the NATS Administrator shall:

1. - 2. (No change.)

(d) (No change.)

7:27-31.12 Early reductions

(a) - (d) (No change.)

(e) The total baseline emissions (E_B) for the purpose of calculation in (d) above shall be determined in accordance with the following:

1. Determine the baseline emission rate. This rate shall be expressed in pounds per MMBtu and shall be the lowest of the following rates:

i. (No change.)

ii. The source's actual 1990 NO_x baseline emission rate, determined by dividing the total NO_x emissions of the source during the May 1 through September 30, 1990 ***,*** period, as reported pursuant to(c)5i above, by the total heat input to the source during the May 1 through September 30, 1990 ***,*** period, as reported pursuant to(c)5ii above; or if the source had commenced operation after 1990, the average actual emission rate during the May 1 through September periods selected pursuant to (e)2 below; or

iii. (No change.)

2. - 4. (No change.)

(f) - (o) (No change.)

(p) The Department shall provide the following information to the ***NATS*** Administrator ***[**of the NATS**]*** and to USEPA, Region II:

7:27-31.13 NO_x Allowance Tracking System (NATS)

(a) - (b) (No change.)

Agency Note: the provision previously adopted at (c) is being recodefied as (d) with change.

***[**(c) The NATS Administrator shall establish and maintain accounts in the NO_x Allowance Tracking System (NATS), including:

1. On behalf of the owner or operator of each budget source, a source-specific compliance account for each budget source;

2. On behalf of the Department, general accounts that will serve as the Department's "primary" account and other "reserve" accounts for allocation purposes pursuant to N.J.A.C.7:27-31.7; and

3. A retirement account to which allowances that have been deducted for end-of-season reconciliation shall be transferred, a retirement account to which allowances used for penalty purposes will be transferred, and a retirement account to which allowances which are voluntarily retired shall be transferred.**]***

Agency Note: the provision previously adopted at (j) is being recodefied as (c) with change.

(c) The NATS Administrator shall associate the following information, at minimum, with each account: name of account owner(s) and operator(s), name of the authorized account representative, name of the alternative authorized account representative, mailing address of the authorized account representative, phone number of the authorized account representative, and the State in which the budget source is located (if applicable). This information shall be gathered from the form used to create the account.

Agency Note: the provision previously adopted at (d) is being recodefied as (p) with no change.

[(d) In addition to the accounts described in (c) above, the NATS Administrator shall establish a general account for any person who completes and submits a General Account Information form to the NATS Administrator.]

Agency Note: the provision previously adopted at (c) is being recodefied as (d) with change.

***(d) The NATS Administrator shall establish and maintain accounts in the NO_x Allowance Tracking System (NATS), including:**

1. On behalf of the owner or operator of each budget source, a source-specific compliance account for each budget source;

2. On behalf of the Department, general accounts that will serve as the Department's "primary" account and other "reserve" accounts for allocation purposes pursuant to N.J.A.C. 7:27-31.7;

3. A retirement account to which allowances that have been deducted for end-of-season reconciliation shall be transferred, a retirement account to which allowances used for penalty purposes will be transferred, and a retirement account to which allowances which are voluntarily retired shall be transferred; and

4. A general account for a person who submits a complete General Account Information form in accordance with (o) below.*

(e) ***[**At the request of the member jurisdictions of the OTC, the United States Environmental Protection Agency's Acid Rain Division has agreed to serve as the NATS Administrator.**]*** Requests for the establishment of an account and any other communication directed to the NATS Administrator shall be addressed as follows:

ATTN: NOX BUDGET PROGRAM
United States Environmental Protection Agency
[**Acid Rain Division**] ***Clean Air Markets Division*** - Mail Code 6204J
401 M Street SW
Washington, DC 20460]*

[**(f) (Reserved.)**]

Agency Note: the provision proposed as (p) is being recodefied as (f) with no change.

(f) The NATS Administrator may, at upon its discretion and on its own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the NATS Administrator shall notify the authorized account representative for the account.

(g) The holder of a compliance account shall designate an authorized account representative and one alternate authorized account representative for the account in accordance with ***[**(i) through**]*** (j) below. ***[**The authorized account representative and the alternate authorized account representative shall be the sole persons who have the authorities and responsibilities set forth in (l) through (n) below.**]*** ***The NATS Administrator shall assign each authorized account representative a unique identification number.***

Agency Note: the provision previously adopted at (h) is being recodefied as (l) with no change.

[(h) The designation of an authorized account representative for compliance account shall be submitted to the Department no later than when any monitoring plan is due to be submitted to the Department pursuant to N.J.A.C. 7:27-31.14 or, if applicable, when an opt-in application is submitted to the Department pursuant to N.J.A.C. 7:27-31.4.]

Agency Note: the provision previously adopted at (l) is being recodefied as (h) with no change.

***(h) The authorized account representative and the alternate authorized account representative are the sole persons who may submit:**

1. A request for a transfer of one or more allowances from the NATS account they are authorized to represent to another account; or

2. A report to the NATS on behalf of an account, as required pursuant to N.J.A.C. 7:27-31.16, Reporting.*

Agency Note: the provision proposed as (i) is recodefied as (m) with change.

*[(i) The following procedure shall be used for the designation of an authorized account representative or an alternate authorized account representative of a compliance account:

1. The holder of the account shall obtain from the NATS Administrator the form entitled "Account Certificate of Representation;"

2. The holder of the account shall provide the information requested on the form. This shall include, at a minimum, the following:

   i. If the account is a compliance account for a specific budget source, a brief description of the budget source, the name of the facility at which the source is located, and the state in which the budget source is located;

   ii. If the account is a compliance account for a specific budget source, the identification numbers for the budget source, including any number assigned by the state and any number assigned by the facility;

   iii. The name, mailing address, telephone and facsimile number of the authorized account representative and of any alternate authorized account representative;

   iv. If the account is a compliance account for a specific budget source, a list of the owners and operators of the budget source, or the list of the owners and operators of the entity applying for the general account;

3. If the account is a compliance account, the "Account Certificate of Representation" form shall contain the following statement of certification, and the authorized account representative shall sign the form and, in doing so, shall attest to this certification:

   i. Until the NATS Administration provides a revised form for use for the years 2003 and thereafter: "I certify that I,____(name)_____, was selected as the authorized account representative as applicable by an agreement binding on the owners and operators of the budget source legally designated as _____(name of source)___."

ii. Once the NATS Administrator provides the revised form: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit."

4. The authorized account representative shall submit the completed and signed form to the NATS Administrator at the address listed on the form or the instructions to the form. A completed and signed form constitutes the agreement of representation. Upon receipt of the form by the NATS Administrator, the named individual(s) are officially designated the authorized account representative and the alternate authorized account representative; and

5. Once the NATS Administrator has recorded the designation of the named individual as authorized account representative or the alternate authorized account representative, the NATS Administrator shall confirm the designation to the holder of the account.]*

Agency Note: the provision previously adopted at (m) is being recodefied as (i) with no change.

(i) Even through a request or a report may be submitted by the alternate authorized account representative pursuant to (l) above, the "primary" authorized account representative remains responsible for all allowance transfer requests and for all required reports.

Agency Note: the provision proposed at (j) is being recodefied as (c) with change.

[(j) Each account in the NATS shall have a unique identification number. Utilizing the information provided on the "Account Certificate of Representation" form for a compliance account or on the General Account Information form for a general account, the NATS Administrator shall associate the following information, at minimum, with each account: name of account owner(s) and operator(s), name of the authorized account representative, name of the alternative authorized account representative, mailing address of the authorized account representative, phone number of the authorized account representative, and the State in which the budget source is located (if applicable). The NATS Administrator shall assign each authorized account representative a unique identification number.]

Agency Note: the provision proposed at (k) is being recodefied as (j) with change.

(j) A person may replace an individual who has been previously designated as an authorized account representative or an alternate authorized account representative for a compliance account with another individual. This shall be done through the submission of a new "Account Certificate of Representation" form. Within 30 days following any change in the owner(s) and/or operator(s) of a budget source, including the addition of a new owner or operator, the authorized account representative or alternate authorized account representative shall submit a revision to the account certificate of representation up-dating the list of owners and operators. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous AAR or alternate AAR prior to the time and date when the NATS Administrator receives the superseding account certificate of representation shall be binding on the new AAR, alternate AAR and the owners and operators of the facility and the budget units at the facility.

Agency Note: the provision proposed as (k) is being recodefied as (j) with change.

[(k) A person may replace an individual who has been previously designated as an authorized account representative or an alternate authorized account representative with another individual. This shall be done through the submittal of a new "Account Certificate of Representation" form for a compliance account or of a new General Account Information form for a general account. Within 30 days following any change in the owner(s) and/or operator(s) of a budget source, including the addition of a new owner or operator, the authorized account representative or alternate authorized account representative shall submit a revision to the account certificate of representation up-dating the list of owners and operators.]

Agency Note: the provision previously adopted at (n) is being recodefied as (k) with no change.

(k) All correspondence from the NATS Administrator to the holder of an account shall be directed to the primary authorized account representative of the account.

Agency Note: the provision previously adopted at (l) is being recodefied as (h) with no change.

***[**(l) The authorized account representative and the alternate authorized account representative are the sole persons who may submit:

1. A request for a transfer of one or more allowances from the NATS account they are authorized to represent to another account; or

2. A report to the NATS on behalf of an account, as required pursuant to N.J.A.C. 7:27-31.16, Reporting.**]***

Agency Note: the provision previously adopted at (h) is being recodefied as (l) with no change.

(l) The designation of an authorized account representative for compliance account shall be submitted to the Department no later than when any monitoring plan is due to be submitted to the Department pursuant to N.J.A.C. 7:27-31.14 or, if applicable, when an opt-in application is submitted to the Department pursuant to N.J.A.C. 7:27-31.4.

Agency Note: the provision previously adopted at (m) is being recodefied as (i) with no change.

[(m) Even through a request or a report may be submitted by the alternate authorized account representative pursuant to (l) above, the "primary" authorized account representative remains responsible for all allowance transfer requests and for all required reports.]

Agency Note: the provision proposed as (i) is recodefied as (m) with change.

***(m) The following procedure shall be used for the designation of an authorized account representative or an alternate authorized account representative of a compliance account:**

1. The holder of the account shall obtain from the NATS Administrator the form entitled "Account Certificate of Representation;"

2. The holder of the account shall provide the information requested on the form. This shall include, at a minimum, the following:

i. A brief description of the budget source, the name of the facility at which the source is located, and the state in which the budget source is located;

ii. The identification numbers for the budget source, including any number assigned by the state and any number assigned by the facility;

iii. The name, mailing address, telephone and facsimile number of the authorized account representative and of any alternate authorized account representative;

iv. A list of the owners and operators of the budget source;

3. The "Account Certificate of Representation" form shall contain the following statement of certification, and the authorized account representative shall sign the form and, in doing so, shall attest to this certification:

i. Until the NATS Administration provides a revised form for use for the years 2003 and thereafter: "I certify that I, ____(name)_____, was selected as the authorized account representative as applicable by an agreement binding on the owners and operators of the budget source legally designated as _____(name of source)___."

ii. Once the NATS Administrator provides the revised form: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit."

4. The authorized account representative shall submit the completed and signed form to the NATS Administrator at the address listed on the form or the instructions to the form. A completed and signed form constitutes the agreement of representation. Upon receipt of the form by the NATS Administrator, the named individual(s) are officially designated the authorized account representative and the alternate authorized account representative; and

5. Once the NATS Administrator has recorded the designation of the named individual as authorized account representative or the alternate authorized account representative, the NATS Administrator shall confirm the designation to the holder of the account.*

Agency Note: the provision previously adopted at (n) is being recodefied as (k) with no change.

[**(n) All correspondence from the NATS Administrator to the holder of an account shall be directed to the primary authorized account representative of the account.**]

Agency Note: the provision proposed as (o) is being recodefied as (n) with no change.

***(n) Unless a specific certification statement is otherwise specified in this subchapter or unless a specific certification statement is otherwise pre-printed on a form issued by the NATS administrator, for any submission relating to compliance with this subchapter for the year 2003 and thereafter, the following certification from the AAR of a compliance account shall accompany the submission: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget 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."*

Agency Note: the provision proposed as (o) is being recodefied as (n) with no change.

[(o) Unless a specific certification statement is otherwise specified in this subchapter or unless a specific certification statement is otherwise pre-printed on a form issued by the NATS administrator, for any submission relating to compliance with this section for the year 2003 and thereafter, the following certification from the AAR shall accompany the submission: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget 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."]

***(o) The following disclaimers apply concerning compliance accounts:**

1. Once a complete account certificate of representation has been submitted and received, the Department and the NATS Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation is received by the NATS Administrator.

2. Except as provided in (j) above, no objection or other communication submitted to the Department or the NATS Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the Department or the NATS Administrator under the NO_x Budget Trading Program.

3. Neither the Department nor the NATS Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.*

Agency Note: the provision proposed as (p) is being recodefied as (f) with no change.

[**(p) The NATS Administrator may, at upon its discretion and on its own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the NATS Administrator shall notify the authorized account representative for the account.**]

Agency Note: the previously adopted at (d) is being recodefied as (p) with changes.

***(p) The NATS Administrator shall establish a general account for any person who completes and submits a General Account Information form to the NATS Administrator in accordance with the following:**

1. To establish a general account for the purpose of holding and transferring allowances, a person shall submit a complete application for a general account to the NATS Administrator and shall include the following elements in a format prescribed by the NATS Administrator:

i. Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the AAR and any alternate AAR;

ii. At the option of the AAR, organization name and type of organization;

iii. A list of all persons subject to a binding agreement for the AAR or any alternate AAR to represent their ownership interest with respect to the allowances held in the general account;

iv. The following certification statement by the AAR and any alternate AAR: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget 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;"

v. The signature of the AAR and any alternate AAR and the dates signed; and

vi. Unless otherwise required by the Department or the NATS Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the NATS Administrator. Neither the Department nor the NATS Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted; and

2. Upon receipt by the NATS Administrator of a complete application for a general account under N.J.A.C. 7:27-31.13(o)1 above:

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

ii. The AAR and any alternate AAR for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, not withstanding any agreement between the AAR or any alternate AAR and such person. Any such person shall be bound by any order or decision issued to the AAR or any alternate AAR by the NATS Administrator or a court regarding the general account;

iii. Each submission concerning the general account shall be submitted, signed, and certified by the AAR or any alternate AAR for the persons having an

ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the AAR or any alternate AAR: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x 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;" and

iv. The NATS Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with N.J.A.C. 7:27-31.13(o)2iii above;

3. The following provisions apply to the establishment of an alternative AAR for a general account and to the submissions to the NATS Administrator from an alternative AAR:

i. An application for a general account may designate one and only one AAR and one and only one alternate AAR who may act on behalf of the AAR. The agreement by which the alternate AAR is selected shall include a procedure for authorizing the alternate AAR to act in lieu of the AAR;

ii. Upon receipt by the NATS Administrator of a complete application for a general account under N.J.A.C. 7:27-31.13(o)1 above, any representation, action, inaction, or submission by any alternate AAR shall be deemed to be a representation, action, inaction, or submission by the AAR;

4. The following provisions pertain to the changing of information associated with a general account:

i. The AAR for a general account may be changed at any time upon receipt by the NATS Administrator of a superseding complete application for a general account in accordance with N.J.A.C. 7:27-31.13(o)1 above. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous AAR prior to the time and date when the NATS Administrator receives the superseding application for a general account shall be binding on the new AAR and the persons with an ownership interest with respect to the allowances in the general account;

ii. The alternate AAR for a general account may be changed at any time upon receipt by the NATS Administrator of a superseding complete application for a general account in accordance with N.J.A.C. 7:27-31.13(o)1 above. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate AAR prior to the time and date when the NATS Administrator receives the superseding application for a general

account shall be binding on the new alternate AAR and the persons with an ownership interest with respect to the allowances in the general account;

iii. The following provisions pertain to the changing of ownership of a general account:

(1) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the AAR and any alternate AAR of the source or unit, and the decisions, orders, actions, and inactions of the NATS Administrator, as if the new person were included in such list;

(2) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the AAR or any alternate AAR shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change;

5. The following disclaimers apply concerning general accounts:

i. Once a complete application for a general account pursuant to N.J.A.C. 7:27-31.13(o)1 above has been submitted and received, the NATS Administrator will rely on the application unless and until a superseding complete application for a general account pursuant to N.J.A.C. 7:27-31.13(o)1 above is received by the NATS Administrator.

ii. Except as provided at N.J.A.C. 7:27-31.13(o)4 above, no objection or other communication submitted to the NATS Administrator concerning the authorization, or any representation, action, inaction, or submission of the AAR or any alternate AAR for a general account shall affect any representation, action, inaction, or submission of the AAR or any alternate AAR or the finality of any decision or order by the NATS Administrator under the NO_x Budget Trading Program.

iii. The NATS Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.*

(q) The authorized account representative of a general account may instruct the NATS Administrator to close the account by submitting both a statement requesting deletion of the account from the NO_x Allowance Tracking System and a correct and complete allowance transfer request for the transfer of all allowances in the account to one or more other NO_x Allowance Tracking System accounts.

(r) If a general account shows no activity for a period of a year or more and does not contain any allowances, the NATS Administrator may notify the authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The NATS Administrator will close the account after the 20-day period unless before the end of the 20-day period the NATS Administrator receives a correct and complete allowance transfer request for transfer of allowances into the account or a statement submitted by the authorized account representative demonstrating to the satisfaction of the NATS Administrator good cause as to why the account should not be closed.

7:27-31.14 Emissions monitoring

(a) For the years 1999 through 2002, the owner or operator of each budget source shall monitor the NO_x emissions from each budget source as specified by this section, by the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," the "Electronic Data Reporting: Acid Rain Program/NO_x Budget Program – Version 2.0," and the "NO_x Budget Program Monitoring Certification and Reporting Instructions." For the years 2003 and beyond, the owner or operator of each budget source shall monitor the NO_x emissions from each budget source as specified in (i) below and by 40 CFR Part 75.

(b) - (d) (No change.)

(e) For the years 1999 through 2002, the owner or operator shall perform initial testing and periodic calibration, accuracy testing and quality assurance/quality control testing of all monitoring systems for each budget source as specified in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(f) During a period when valid data is not being recorded by monitoring devices approved for use to demonstrate compliance with this subchapter, missing or invalid data shall be replaced with representative data in accordance with the missing data provisions of 40 C.F.R. Part 75 and , for the years 1999 through 2002, the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(g) Not withstanding (f) above, during the period from when monitoring systems are required to be installed and operated through the earlier of the provisional certification date of the monitors and April 30, 1999, data regarding the source shall be reported, and the owner or operator shall provide an assessment, based on sound engineering judgement, as to whether the data meets the quality assurance tests in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and is representative of actual data based on sound engineering judgement. During any other periods when the source is operating or if the data does not meet existing state quality assurance requirements, invalid data shall be replaced with representative data in accordance with the missing data provisions of 40 C.F.R. Part 75 and , for the years 1999 through 2002, the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(h) Only for monitoring to take place during the years 1999 through 2002, as part of the monitoring plan submittal to the Department, the owner or operator of a budget source may petition the Department to use an alternative monitoring ***[**method**]*** ***system*** to what is otherwise specifically applicable and specifically prescribed to a particular unit as indicated in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program." If the Department determines that the accuracy or reliability of a method is not comparable to other approved methods, the

Department may disallowed the use of such method or may require the use of corrective factors to be included in the method. The Department shall not approve an alternative method for determining NO_x emission rate if the source has installed or is required to install and operate a NO_x CEMS. The Department will provide an opportunity for review by USEPA and other State environmental agencies before approving any alternative monitoring ***[**methods**]*** ***systems*** . The Department shall submit any approved monitoring plans containing alternative methods to the USEPA.

(i) Subsections (j) through (aa) below generally apply to the monitoring and reporting of NO_x emissions from budget sources during the 2003 control period and thereafter. ***For purposes of complying with the provisions below which require compliance with monitoring and/or reporting requirements in 40 CFR part 75, the definitions in 7:27-31.2 of this rule shall be applied to the use of terms in 40 CFR 75; and the terms "affected unit," "designated representative," and "continuous emission monitoring system" as used in 40 CFR part 75 shall be considered to have the meanings of the terms"budget source," "authorized account representative," and "continuous emission monitoring system" respectively as these terms are defined in 7:27-31.2.***

(j) Regarding installation, certification of monitoring systems, and data accounting, the owner or operator of each budget source shall meet the requirements in (j)1 through 4 below. These provisions also apply to a source for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, as provided at N.J.A.C. 7:27-31.4. The owner or operator shall:

1. Install all monitoring systems required under this section for monitoring NO_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input, and flow, in accordance with ***[**(r), (s), and (aa) below**]*** ***40 C.F.R. 75.72 and 75.76***;

2. Install all monitoring systems for monitoring heat input;

3. Successfully complete all certification tests required pursuant to (n) through (q) below and meet all other provisions of this section and 40 CFR 75 applicable to the monitoring systems under (j)1 and 2 above; and

4. Record and report data from the monitoring systems under (j)1 and 2 above.

(k) The owner or operator must meet the requirements of paragraphs (j)1 through 3 above on or before the following dates and must record and report data on and after the following dates:

1. Budget sources that commence operation before January 1, 2002, must comply with the requirements of this section by May 1, 2002;

2. Budget sources that commence operation on or after January 1, 2002 ***,*** and that report on an annual basis under (x) below must comply with the requirements of this section by the later of the following dates:

   i. May 1, 2002; or

   ii. The earlier of:

      (1) 180 days after the date on which the source commences operation; or

(2) For any source that, any time on or after January 1, 1995, serves ***[**a**]*** ***an electric*** generator with a nameplate capacity greater than 25 MW and sells any amount of electricity, 90 days after the date on which the source commences commercial operation ***[.]*** ***;***

3. Budget sources that commence operation on or after January 1, 2002 ***,*** and that report on a control season basis under (x) must comply with the requirements of this section by the later of the following dates:

i. The earlier of:

(1) 180 days after the date on which the source commences operation; or

(2) For any source that, any time on or after January 1, 1995, serves ***[**a**]*** ***an electric*** generator with a nameplate capacity greater than 25 MW and sells any amount of electricity, 90 days after the date on which the source commences commercial operation; or

ii. If the applicable deadline under (k)3i above does not occur during a control period, ***the*** May 1 immediately following the date determined in accordance with paragraph (k)3i above;

4. For a budget source with a new stack or flue for which construction is completed after the applicable deadline under paragraph (k)1, 2 or 3 above or N.J.A.C. 7:27-31.4:

i. Ninety days after the date on which emissions first exit to the atmosphere through the new stack or flue; or

ii. If the source reports on a control season basis under (x) below and the applicable deadline under (k)4i of this section does not occur during the control period, ***the*** May 1 immediately following the applicable deadline in paragraph (k)4i above; and

5. For a source for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified N.J.A.C. 7:27-31.4.

(l) The owner or operator of a budget source under paragraphs (k)3 or (k)4 above must determine, record and report NO_x mass, heat input and any other values required to determine NO_x mass (e.g. NO_x emission rate and heat input or NO_x concentration and stack flow) using the provisions of 40 CFR 75.70(g), from the date and hour that the source starts operating until all required certification tests are successfully completed.

(m) ***[**Prohibitions are as follows:**]*** ***No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall:***

1. ***[**No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall use**]*** ***Use*** any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with (y) and (z) below ***[.]*** ***;***

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2. *[No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall operate]* ***Operate*** the source so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section and 40 CFR 75, except as provided for in 40 CFR 75.74 *[.]* ***;***

3. *[No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt]* ***Disrupt*** the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section and 40 CFR 75 of this chapter except as provided for in 40 CFR 75.74 *[.]* ***; and***

4. *[No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall retire]* ***Retire*** or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this section, except under any one of the following circumstances:

   i. During the period that the source is covered by a retired source exemption that is in effect;

   ii. The owner or operator is monitoring emissions from the source with another certified monitoring system approved, in accordance with the applicable provisions of this section and 40 CFR 75, by the Department for use at that source that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

   iii. The authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with (o)2 below.

(n) The owner or operator of a budget source that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:

1. If, prior to January 1, 1998, the NETS Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the authorized account representative shall resubmit the petition to the NETS Administrator under 40 CFR 96.75(a) to determine if the approval applies under the NO_x Budget Program *[.]* ***; and***

2. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any NO_x concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (b) of this section.

(o) The owner or operator of a budget source that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a source that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of (p) below and the owner or

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operator of a source that qualifies to use an alternative monitoring system under subpart E of 40 CFR 75 shall also meet the requirements of (q) below. The owner or operator of a budget source that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NO_x concentration CEMS under 40 CFR 75.71(a)(2) of this chapter also shall comply with the following initial certification and recertification procedures ***[.]*** ***:***

1. The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in 40 CFR 96.70(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this subchapter in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required ***[.]*** ***;***

2. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the NETS Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B of 40 CFR 75, the owner or operator shall recertify the monitoring system according to 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 source's operation that the NETS Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include, but are not limited to: replacement of the analyzer ***[,]*** ***or*** change in location or orientation of the sampling probe or site ***[**, or changing of flow rate monitor polynomial coefficients.**]*** ***; and***

3. The certification approval process for initial certifications and recertification is as follows:

   i. The authorized account representative shall submit to the Department and the USEPA Regional Office a written notice of the dates of certification in accordance with (t) below ***[.]*** ***;***

   ii. The authorized account representative shall submit to the Department a certification application for each monitoring system required under subpart H of 40 CFR 75. a complete certification application shall include the information specified in subpart H of 40 CFR 75 ***[.]*** ***;***

   iii. Except for sources using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3) . A provisionally certified monitor may be used under the NO_x Budget Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under paragraph (o)3ii above. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional

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certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department ***[.]*** ***;***

iv. The Department 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 (o)3ii above. In the event the Department does not issue such a notice within such 120-day period, each monitoring system included in the certification application as having met the applicable performance requirements of 40 CFR 75 will be deemed certified for use under the NO_x Budget Program. ***The approval process is as follows:***

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75, then the Department will issue a written notice of approval of the certification application within 120 days of receipt ***[.]*** ***;***

(2) A certification application will be considered complete when all of the applicable information required to be submitted under (o)3ii above has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the authorized account representative must submit the additional information required to complete the certification application. If the authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under (o)3iv(3) below ***[.]*** ***;***

(3) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this subchapter, or if the certification application is incomplete and the requirement for disapproval under paragraph (o)3iv(2) above has been met, the Department 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 Department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in (o)3v below for each monitoring system or component thereof which is disapproved for initial certification ***[.]*** ***; and***

(4) The Department may issue a notice of disapproval of the certification status of a monitor in accordance with (s) below ***[.]*** ***; and***

v. If the Department issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (o)3iv(4) above, then:

(1) The owner or operator shall substitute the following values, for each ***[***hour of source operation***]*** ***unit operating hour*** during the period of invalid data beginning with the date and hour of provisional certification and

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continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):

(A) For sources using or intending to monitor for NO_x emission rate and heat input or for sources using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the source ***[.]* *; and***

(B) For sources intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the source under section 2.1 of Appendix A of 40 CFR 75;

(2) The authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (o)3i and ii above; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 ***[**source**]* *unit*** operating days after the date of issuance of the notice of disapproval.

(p) The owner or operator of a gas-fired or oil-fired source using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of (n) through (q), except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Program, as of the following dates:

1. For sources that are reporting on an annual basis under (x) below:

i. For a source that has commences operation before its compliance deadline under (o) above, from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review; ***or***

ii. For a source that commences operation after its compliance deadline under (o) above, the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for Department review;

2. For sources that are reporting on a control period basis under (x)3ii below:

i. For a source that commenced operation before its compliance deadline under (o) above, where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review; or

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ii. For a source that commenced operation before its compliance deadline under (o) above, where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review;

3. For a source that commences operation after its compliance deadline under (o) above, where the source commences operation before May 1, from May 1 of the year that the source commenced operation, until the completion of the period for the Department's review; ***[**or**]*** ***and***

4. For a source that has not operated after its compliance deadline under (o) above, where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department's review.

(q) The authorized account representative representing the owner or operator of each source applying to monitor using an alternative monitoring system approved by the NETS Administrator ***(*** and, if applicable, the Department ***)*** under subpart E of 40 CFR 75 shall apply for certification to the Department prior to use of the system under the NO_x Budget Program. The authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in (o) above. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in (o)3 above and 40 CFR 75.20(f).

(r) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of 40 CFR 75, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of 40 CFR 75 .

(s) Whenever an audit of a monitoring system and/or a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because ***[**or**]*** ***it*** is presently not certifiable ***or*** because it did not or does not currently meet a particular performance specification or other requirement under (n) through (q) above or the applicable provisions of 40 CFR 75, either at the time of the initial certification or recertification application submission or at the time of the audit, the Department will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the NETS Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall 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. The owner or operator shall follow the initial certification or recertification procedures in 40 CFR 96.71 for each disapproved system.

(t) The authorized account representative for a budget source shall submit written notice to the Department and the NETS Administrator in accordance with 40 CFR 75.61, except that if the source is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Department.

(u) General recordkeeping and reporting provisions are as follows:

1. ***[**The**]*** ***An*** authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements N.J.A.C. 7:27-31.13(o) *[.]* ***; and***

2. If the authorized account representative for a budget source subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR 75 and which includes data and information required under this section or subpart H of 40 CFR 75 is not the same person as the designated representative or the alternative designated representative for the source under part 72, the submission must also be signed by the designated representative or the alternative designated representative.

(v) The following apply to monitoring plans:

1. The owner or operator of a source subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR 75 ***[.]*** ***; and***

2. The owner or operator of a source that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR 75.

(w) The authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under 40 CFR 96.71 including the information required under subpart H of 40 CFR 75 .

(x) The authorized account representative shall submit quarterly reports, as follows:

1. If a source is subject to an Acid Rain emission limitation or if the owner or operator of the budget source chooses to meet the annual reporting requirements of ***this*** section, the authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

   i. For sources commencing operation prior to May 1, 2002 ***[**that are not required to certify monitors by May 1, 2000 under (k)1 above**]***, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii above or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 ***,*** through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or

   ii. For a source that commences operation after May 1, 2002, the calendar quarter in which the source commences operation, data shall be reported from the date and hour corresponding to when the source commenced operation ***[.]*** ***;***

2. If a budget source is not subject to an Acid Rain emission limitation, then the authorized account representative shall either:

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i. Meet all of the requirements of 40 CFR 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in paragraph (x)1 above; or

ii. Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b) . The authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(1) For sources commencing operation prior to May 1, 2002 ***[**that are not required to certify monitors by May 1, 2000 under (k)1 above**]***, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii. or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 ***,*** through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002;

(2) For sources that commence operation after May 1, 2002 ***,*** during the control period, the calendar quarter in which the source commences operation. Data shall be reported from the date and hour corresponding to when the source commenced operation;

(3) For sources that commence operation after May 1, 2002 ***,*** and before May 1 of the year in which the source commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii or, if the certification tests are not completed by May 1 of the year in which the source commences operation, May 1 of the year in which the source commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the source commences operation; ***[**or**]*** ***and***

(4) For sources that commence operation after May 1, 2002 ***,*** and after September 30 of the year in which the source commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii or, if the certification tests are not completed by May 1 of the year after the source commences operation, May 1 of the year after the source commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the source commences operation ***[.]*** ***;***

3. The authorized account representative shall submit each quarterly report to the NETS Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR 75 and 40 CFR 75.64 ***[.]*** ***and in accordance with the following:***

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i. For sources subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR 75 for each budget source (or group of sources using a common stack) as well as information required in subpart G of 40 CFR 75 ***[.]*** ***; and***

ii. For sources not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR 75 for each budget source (or group of sources using a common stack)***[.]*** ***; and***

4. The authorized account representative shall submit to the NETS Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the source's emissions are correctly and fully monitored. The certification shall state that:

i. The monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75, including the quality assurance procedures and specifications;

ii. For a source with add-on NO_x emission controls and for all hours where 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 monitoring plan and the substitute values do not systematically underestimate NO_x emissions; and

iii. For a source that is reporting on a control period basis under (x) above the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of 40 CFR 75 are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

(y) The authorized account representative of a budget source that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the NETS Administrator requesting approval to apply an alternative to any requirement of this section ***[.]*** ***and shall conform with the following:***

1. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved by the NETS Administrator, in consultation with the Department ***[.]*** ***; and***

2. Notwithstanding (y)1 above, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by (z) below.

(z) ***The following apply to any petition requesting approval to apply for an alternative to any emissions monitoring requirement in this section:***

1. The authorized account representative of a budget source that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Department and the NETS Administrator requesting approval to apply an alternative to any requirement of this section ***[.]*** ***;***

[1.] ***2.*** The authorized account representative of a budget source that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Department and the NETS Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NO_x concentration CEMS used under 40 CFR 75.71(a)(2)*[.]* ***; and***

[2.] ***3.*** Application of an alternative to any requirement of this section is in accordance with this section only to the extent the petition under this subsection is approved by both the Department and the NETS Administrator.

(aa) The owner or operator of a source that elects to monitor and report NO_x Mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the source level using the procedures set forth in 40 CFR 75.

7:27-31.16 Reporting

(a) - (c) (No change.)

(d) In order for the Department to obtain data necessary for the allocation of allowances pursuant to N.J.A.C. 7:27-31.7, in the quarterly EDR submissions to the NETS for each third calendar quarter, the AAR for a budget source shall submit the following information for each budget source regardless as to whether the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" specifies the reporting of the information:

1. The total heat input, expressed in MMBtu, to the source during the control period if the hourly heat input to the source is not reported in the EDR; and

2. Commencing in the EDR ***submission*** for the third quarter 2000, and ***in*** each third quarter EDR submission thereafter, the total net electric output and the total net useful *[steam]* ***heat*** output for the control period.

(e) - (f) (No change.)

7:27-31.17 End-of-season reconciliation

(a) - (b) (No change.)

(c) For each budget source, the basis for a determination of compliance in the reconciliation process shall be the following:

1. Monitored emissions data as reported by the budget source to the NETS Administrator, as reported to the NETS Administrator pursuant to N.J.A.C. 7:27-31.16 above, and as adjusted by the ***NETS*** Administrator to be in accordance with N.J.A.C. 7:27-31.14, Emissions monitoring; and

2. The balance in the compliance account of the budget source. This balance shall be the total number of allowances ***available for use*** in the account as of the allowance transfer deadline after all applicable allowance allocations have been made and after all transfers have been recorded in the NATS.

(d) (No change.)

(e) Each year during the period November 1 through the allowance transfer deadline, inclusive, the authorized account representative may request the NATS Administrator to deduct allowances from the compliance account during the reconciliation process for that year's control period in a specific order. This request shall be submitted by the AAR to the NATS Administrator by no sooner than November 1 and no later than the allowance transfer deadline. In the request, the AAR shall identify the account number of the compliance account from which the deductions shall be made and the serial numbers of the allowances to be deducted in order of deduction.

(f) If an AAR fails to submit a request pursuant to (e) above for the compliance account of a budget source, the NATS Administrator shall ***[**first**]*** deduct allowances ***[**with serial numbers indicating the current year in the order in which they were deposited into the account, then shall deduct banked allowances in the order in which they were deposited into the account.**]*** ***in the following order:**

1. First, those allowances that were allocated directly to the account for the control period;

2. Second, those allowances that were allocated for the control period to another account and subsequently transferred in the account, in order of their date of transfer;

3. Third, those allowances that were allocated directly to the account for a prior control period; and

4. Forth, those allowances that were allocated for a prior control period to another account and subsequently transferred in the account, in order of their date of transfer.*

(g) The NATS Administrator shall reconcile allowances with the NO_x emissions from each budget source as follows:

1. ***First, for each opt-in source, if the actual heat input for the control period is less than the heat input used to determine the number of allowances created for the source pursuant to N.J.A.C. 7:27-31.4, then a number of allowances shall be deducted from the compliance account as determined in accordance with the following equation:**

$$\text{Allowances} = \frac{E}{HI} \times (HI_B - HI) \times \frac{1}{2{,}000}$$

Where:

E = The total NO_x emission of the source during the control period, expressed in pounds;

HI = The total heat input to the source, expressed in MMBtu;

HI_B = The average heat input used to calculate the number of allowances as determined at N.J.A.C. 7:27-31.4(j)1, expressed in MMBtu; and

2,000 = The factor converting pounds into tons;*

2. If the NATS Administrator had announced that all banked allowances may be used on a one-for-one basis pursuant to N.J.A.C. 7:27-31.11(c)2i, then one allowance shall be deducted

from each budget source's compliance account for each ton of NO_x emitted from the source during the control period; ***and***

Recodify existing 2. as 3. (No change in text.)

***[**3. In addition to (g)1 or 2 above, for each opt-in source, if the actual heat input for the control period is less than the heat input used to determine the number of allowances created for the source pursuant to N.J.A.C. 7:27-31.4, then a number of allowances shall be deducted from the compliance account as determined in accordance with the following equation:

$$\text{Allowances} = \frac{E}{HI} \times (HI_B - HI) \times \frac{1}{2{,}000}$$

Where:

E = The total NO_x emission of the source during the control period, expressed in pounds

HI = The total heat input to the source, expressed in MMBtu

HI_B = The average heat input used to calculate the number of allowances as determined at N.J.A.C. 7:27-31.4(j)1, expressed in MMBtu

2,000 = The factor converting pounds into tons***]***

(h) - (i) (No change.)

(j) In the case of more than one budget source sharing a common stack and having emissions that are not separately monitored or apportioned:

1. The authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with N.J.A.C. 7:27-31.18; and

2. The NATS Administrator will deduct NO_x allowances for each such budget source until the number of allowances deducted equals the source's identified percentage of the number of tons of NO_x emissions from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

7:27-31.18 Compliance certification

(a) For each control period, the authorized account representative for the budget source shall submit ***[**to the Department***]*** an annual compliance certification ***to the Department and to the NETS Administrator*** .

(b) The compliance certification shall be submitted no later than the allowance transfer deadline of each year to ***the NETS Administrator at the address on the compliance certification from and to the Department at*** the following address:

ATTN: NOX BUDGET COMPLIANCE CERTIFICATION
New Jersey Department of Environmental Protection
Office of Air Quality Management
401 East State Street -- P.O. Box 418
Trenton, NJ 08625-0418

(c) The compliance certification shall ***be submitted on the NO_x Annual Compliance Certification Report obtained from the Department or the NETS Administrator or from http://www.epa.gov/acidrain/otc/otcmain.html and shall**** contain, at a minimum:

1. - 2. (No change.)

3. A statement indicating whether sufficient allowances are held in the budget source's compliance account as of the allowance transfer deadline to properly account for the budget source's NO_x emissions during the control period ***, as determined pursuant to the provisions of N.J.A.C. 7:27-31.17***;

4. - 5. (No change.)

6. Certification pursuant to N.J.A.C. 7:27- ***[**1.39**]*** ***31.13(o) or as otherwise indicated on the form***.

(d) (No change.)

(e) The Department ***or the NATS Administrator**** may review and conduct independent audits concerning any compliance certification submitted pursuant to this section or any other submission under the NO_x Budget Program and make appropriate adjustments of the information in the compliance certifications or other submissions. The NATS Administrator shall deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account based on the information in the compliance certifications or other submissions, as adjusted by the Department ***or the NATS Administrator**** pursuant to this subsection.

7:27-31.21 Guidance documents and sources incorporated by reference

(a) (No change.)

(b) Copies of the documents listed at (a)1-3 above may be downloaded from USEPA ***[**Acid Rain**]*** ***Clean Air Markets**** Division's world wide web page, at <http://www.epa.gov/acidrain/otc/otcmain.html>. Copies of the documents referenced in (a) above may be obtained by sending a written request to the following address:

New Jersey Department of Environmental Protection
Office of Air Quality Management - Rule Development Section
401 East State Street - 7th floor
P.O. Box 418
Trenton, New Jersey 08625-0418

(c) (No change.)

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7:27-31.22 Compliance Supplement Pool

(a) As authorized under the USEPA SIP Call at 40 CFR 51.121, New Jersey's compliance supplement pool is **[**1,479**]*** ***1,550*** allowances ***pursuant to the USEPA's publication in the Federal Register on March 2, 2000, at 65 FR 11228. If the USEPA publishes a different figure for New Jersey's compliance supplement pool subsequent to March 2, 2000, and prior to allocation of the compliance supplement pool pursuant to this section, then the total amount of allowances in New Jersey's compliance supplement pool shall be the figure cited in such publication rather than 1,550 allowances*** . Such allowances are only valid to be used to authorize the NO_x emissions of a budget source during the control periods of the years 2003 and 2004.

(b) The Department shall allocate the compliance supplement pool by May 1, 2003 ***,*** in accordance with the following:

1. The Department shall determine the number of banked allowances ***of year 2000 through 2002 vintage*** held in New Jersey compliance accounts as of April 1, 2003;

2. If the total number of allowances determined in 1 above is less than or equal to **[**1,479**]*** ***the total number of allowances in New Jersey's compliance supplement pool*** , then:

   i. The Department shall allocate one allowance from the compliance supplement pool to each compliance account ***in exchange*** for each banked allowance ***having a 2000, 2001, or 2002 vintage*** ; and

   ii. The Department shall allocate any allowances remaining in the compliance supplement pool in accordance with 4 below;

3. If the total number of banked allowances determined in 1 above is greater than **[**1,479**]*** ***the total number of allowances in New Jersey's compliance supplement pool*** , then the Department shall allocate allowances from the compliance supplement pool to each compliance account ***in exchange for banked allowances*** in accordance with the following equation:

$$\text{Allowances} = \frac{*\,[1{,}479]\,* \;\; *\,\mathbf{CSP}\,*}{A_{Total}} \times A$$

Where:

[1,479**]*** ***CSP*** = The total number of allowances in the compliance supplement pool;

A = The number of allowances ***of year 2000 through 2002 vintage*** in each compliance account; and

A_{Total} = The total number of banked allowances ***of year 2000 through 2002 vintage*** in all New Jersey compliance accounts; and

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4. After allocating allowances pursuant to 2i above, the Department shall allocate any remaining allowances to the owner or operator of each budget source that has been approved to receive compliance supplement pool allowances as specified in 6 and 7 below. If there are not enough allowances to satisfy these approvals in full, then the Department shall allocate all the remaining allowances, and each owner or operator shall receive a number of allowances equal to its prorated share of the remaining allowances;

5. If there still are allowances remaining in the compliance supplement pool after allocating allowances pursuant to 4 above, then the Department shall ***[**retite**]*** ***retire*** any allowances remaining in the compliance supplement pool.

6. By November 30, 2001, the owner or operator of a budget source may submit to the Department a request to receive allowances from the compliance supplement pool by demonstrating all of the following:

   i. For a source used to generate electricity, compliance with this subchapter for the 2003 control period by May 1, 2003 ***,*** would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of the control technologies necessary to comply with this subchapter;

   ii. For a source not used to generate electricity, compliance with this subchapter for the 2003 control period by May 1, 2003 ***,*** would create undue risk for the source or its associated industry to a degree that is comparable to the risk described in (b)6i above;

   iii. It would not be possible for the source to comply with this subchapter by generating early reduction allowances or acquiring early reduction allowances from other sources;

   iv. It would not be possible to comply with this subchapter by acquiring sufficient allowances from other persons who hold allowances; and

   v. The owner or operator has made a written commitment to the Department to install advanced NO_x control systems or to repower, either of which is designed to achieve a 90 percent NO_x emission rate reduction;

7. The Department shall review all requests made pursuant to 6 above, and shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of the allocating compliance supplement pool allowances to the requests interimly approved by the Department before allocating the allowances pursuant to 4 above.

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) - (l) (No change.)

(m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule

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summaries for he requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have on legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. - 30. (No change.)

31. The violations of N.J.A.C. 7:27-31, and the civil administrative penalty amounts for each violation, are as set forth as follows:

i. The penalty amounts for violation of N.J.A.C. 7:27-31.3(i), which requires a minimum number of allowances to be held in a budget source's compliance account as of the allowance transfer deadline, are set forth in the following table, directly dependent on the number of tons of shortfall (each ton of excess emissions is a separate violation):

Amount of Shortfall (in tons)	Civil Administrative Penalty Amounts (per ton)
1 - 10	$2,000
11 - 20	$4,000
21 - 50	$10,000
51 - 100	$30,000
over 100	$50,000

ii. The base penalty amount as calculated in i. above shall be limited by the statutory maximum penalty calculated as follows:

(1) For first offense levels (see N.J.A.C. 7:27A-3.5(f) for an explanation of determining offense levels) the penalty shall not exceed $10,000 per day for each day of violation within the control period ($10,000 per day × 153 days = $1,530,000);

(2) For second offense levels (see N.J.A.C. 7:27A-3.5(f) for an explanation of determining offense levels) the penalty shall not exceed $25,000 per day for each day of violation within the control period ($25,000 per day × 153 days = $3,825,000);

(3) For third and subsequent offense levels (see N.J.A.C. 7:27A-3.5(f) for an explanation of determining offense levels) the penalty shall not exceed $50,000 per day for each day of violation within the control period ($50,000 per day × 153 days = $7,650,000); and

(4) If the authorized account representative of the budget source can prove that the number of days of violation in the control period is less than 153 days, then the maximum penalty as calculated in (1) - (3) above shall be adjusted accordingly; and

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iii. The violations of other provisions at N.J.A.C. 7:27-31, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
. . .					
(n) - (p)	(No change.)				

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) and the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize the proposal.

July 31, 2000 /S/ Robert C. Shinn, Jr.
DATE COMMISSIONER ROBERT C. SHINN, JR.

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