4/1/99
Section 1 - General Provisions

a. The purpose of this regulation is to reduce nitrogen oxides (NO_x) emissions in Delaware through implementation of Delaware's portion of the Ozone Transport Commission's (*OTC*) September 27, 1994 Memorandum of Understanding (*MOU*) by establishing in the State of Delaware a NO_x Budget Program.

b. A NO_x *allowance* is an authorization to emit NO_x, valid only for the purposes of meeting the requirements of this regulation.

   1. All applicable state and federal requirements remain applicable.

   2. A NO_x *allowance* does not constitute a security or other form of property.

c. On or after May 1, 1999, the *owner or operator* of each *budget source* shall, not later than December 31 of each calendar year, hold a quantity of NO_x *allowances* in the *budget source's current year NATS account* that is equal to or greater than the total NO_x emitted from that *budget source* during the period May 1 through September 30 of the subject year.

d. *Allowance transfers* between *budget sources* sharing a common *owner or operator* and/or *authorized account representative* are subject to all applicable requirements of this regulation, including the *allowance transfer* requirements identified in Section 11 of this regulation.

e. Offsets required for new or modified sources subject to non-attainment new source review must be obtained in accordance with Regulation 25 of Delaware's "**Regulations Governing the Control of Air Pollution**" and Section 173 of the Clean Air Act. *Allowances* are not considered offsets within the context of this regulation.

f. Nothing in this regulation shall be construed to limit the authority of the Department to condition, limit, suspend, or terminate any *allowances* or authorization to emit.

g. The Department shall maintain an up to date listing of the NO_x sources subject to this regulation.

   1. The listing shall identify the name of each NO_x *budget source* and its annual *allowance allocation*, if any.

   2. The Department shall submit a copy of the listing to the *NATS Administrator* by January 1 of each year, commencing in 1999.

4/1/99
Section 2 - Applicability

a. The NO_x Budget Program applies to any *owner or operator* of a *budget source* where that source is located in the State of Delaware.

b. Any person who owns, operates, leases, or controls a stationary NO_x source in Delaware not subject to this program, by definition, may choose to *opt into* the NO_x Budget Program in accordance with the requirements of Section 8 of this regulation. Upon approval of the *opt-*

in application by the Department, the person shall be subject to all terms and conditions of this regulation.

c. A *general account* may be established in accordance with Section 7 of this regulation. The person responsible for the *general account* shall be responsible for meeting the requirements for an *Authorized Account Representative* and applicable *account* maintenance fees.

4/1/99
Section 3 - Definitions

For the purposes of this regulation, the following definitions apply. All terms not defined herein shall have the meaning given them in the Clean Air Act and Regulation 1 of the State of Delaware "**Regulations Governing the Control of Air Pollution**".

a. ***Account*** means the place in the *NO_x Allowance Tracking System* where allowances held by a *budget source* (*compliance account*), or allowances held by any person (*general account*), are *recorded*.

b. ***Account number*** means the identification number assigned by the *NO_x Allowance Tracking System* (*NATS*) *Administrator* to a compliance or *general account* pursuant to Section 10 of this regulation.

c. ***Administrator*** means the Administrator of the *U.S. EPA*. The *Administrator* of the U.S. EPA or his designee(s) shall manage and operate the *NO_x Allowance Tracking System* and the *NO_x Emissions Tracking System.*

d. ***Allocate* or *Allocation*** means the assignment of *allowances* to a *budget source* through this regulation; and as *recorded* by the *Administrator* in a *NO_x Allowance Tracking System compliance account*.

e. ***Allowance*** means the limited authorization to emit one ton of NO_x during a specified *control period*, or any *control period* thereafter subject to the terms and conditions for use of *banked allowance* as defined by this regulation. All *allowance*s shall be allocated, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

f. ***Allowance deduction*** means the withdrawal of allowances for permanent retirement by the *NATS Administrator* from a *NO_x Allowance Tracking System account* pursuant to Section 16 of this regulation.

g. ***Allowance transfer*** means the conveyance to another *account* of one or more *allowances* from one account to another by whatever means, including but not limited to purchase, trade, auction, or gift in accordance with the procedures established in Section 11 of this regulation, effected by the submission of an *allowance transfer* request to the *NATS Administrator*.

h. ***Alternative monitoring system*** means a system or component of a system, designed to provide direct or indirect data of mass emissions per time period, pollutant concentrations, or volumetric flow as provided for in Section 13 of this regulation.

i. ***Authorized Account Representative (AAR)*** means the responsible person who is authorized, in writing, to transfer and otherwise manage *allowances* as well as certify reports to the *NATS* and the *NETS*.

j. ***Banked Allowance*** means an *allowance* which is not used to reconcile emissions in the designated year of *allocation* but which is carried forward into the next year and flagged in the *compliance* or *general account* as "banked".

k. ***Banking*** means the retention of unused *allowances* from one *control period* for use in a future *control period*.

l. ***Baseline*** means, except for the purposes of Section 12(d) (Early Reductions) of this regulation, the NO_x emission inventory approved by the Ozone Transport Commission on June 13, 1995, and revised thereafter, as the official 1990 baseline emissions of May 1 through September 30 for purposes of the NO_x Budget Program.

m. ***Boiler*** means a unit which combusts *fossil fuel* to produce steam or to heat water, or any other heat transfer medium.

n. ***Budget* or *Emission Budget*** means the numerical result in tons per *control period* of NO_x emissions which results from the application of the emission reduction requirement of the *OTC MOU* dated September 27, 1994, and which is the maximum amount of NO_x emissions which may be released from the *budget sources* collectively during a given *control period*.

o. ***Budget source*** means a *fossil fuel fired boiler* or *indirect heat exchanger* with a *maximum heat input* capacity of 250 MMBTU/Hour, or more; and all *electric generating units* with a generator *nameplate capacity* of 15 MW, or greater. (Although not a *budget source* by definition, any person who applies to *opt into* the NO_x Budget Program shall be considered a *budget source* and subject to applicable program requirements upon approval of the application for *opt-in*.)

p. ***Clean Air Act*** means the federal Clean Air Act (42 U.S.C. 7401- 7626).

q. ***Compliance account*** means the *account* for a particular *budget source* in the *NO_x Allowance Tracking System*, in which are held current and/or future year allowances.

r. ***Continuous Emissions Monitoring System* (*CEMS*)** means the equipment required by this regulation used to sample, analyze, and measure which will provide a permanent record of emissions expressed in pounds per million British Thermal Units (Btu) and tons per day. The following systems are component parts included in a continuous emissions monitoring system: nitrogen oxides pollutant concentration monitor, diluent gas monitor (oxygen or carbon dioxide), a data acquisition and handling system, and flow monitoring systems (where appropriate).

s. ***Control period*** means the period beginning May 1 of each year and ending on September 30 of the same year, inclusive.

t. ***Current year*** means the calendar year in which the action takes place or for which an *allocation* is designated. For example, an *allowance allocated* for use in 1999 which goes unused and becomes a *banked allowance* on January 1, 2000 can be used in the "*Current Year*" 2000 subject to the conditions for *banked allowance* use as stated in this regulation.

u. ***Early Reduction Allowance*** means an *allowance* credited for a NO_x emission reduction achieved during the *control period*s of either 1997 or 1998, or both.

v. ***Electric generating unit*** means any *fossil fuel fired* combustion unit which provides electricity for sale or use.

w. ***Excess emissions*** means emissions of nitrogen oxides reported by a *budget source* during a particular *control period*, rounded to the nearest whole ton, which is greater than the number of *allowances* which are available in that *budget source's* NO_x *Allowance Tracking System compliance account* on December 31 of the calendar year for the subject NO_x control season. For the purpose of determining whole tons on *excess emissions*, the number of tons of *excess emissions* shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

x. ***Existing budget source*** means a *budget source* that operated at any time during the period beginning May 1, 1990 through September 30, 1990.

y. ***Fossil fuel*** means natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived wholly, or in part, from such material. For the purposes of this regulation only, this definition does not include CO derived from any source.

z. ***Fossil fuel fired*** means the combustion of *fossil fuel* or any derivative of *fossil fuel* alone, or, if in combination with any other fuel, where *fossil fuel* comprises 51% or greater of the annual *heat input* on a BTU basis.

aa. ***General Account*** means an *account* in the *NATS* that is not a *compliance account*.

bb. ***Heat input*** means heat derived from the combustion of any fuel in a *budget source. Heat input* does not include the heat derived from preheated combustion air, recirculated flue gas, or exhaust from other sources.

cc. ***Indirect heat exchanger*** means combustion equipment in which the flame and/or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls, which includes, but is not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, reactor feed preheaters, and fuel-fired reactors such as steam hydrocarbon reformer heaters and pyrolysis heaters.

dd. ***Maximum heat input capacity*** means the ability of a *budget source* to combust a stated maximum amount of fuel on a steady state basis, as determined by the greater of the physical design rating or the actual maximum operating capacity of the *budget source*. *Maximum heat input capacity* is expressed in millions of British Thermal Units (MMBTU) per unit of time which is the product of the gross caloric value of the fuel (expressed in MMBTU/pound) multiplied by the fuel feed rate in the combustion device (expressed in pounds of fuel/time).

ee. ***Nameplate capacity*** means the maximum electrical generating output that a generator can sustain when not restricted by seasonal or other deratings.

ff. ***New budget source*** means a NO_x source that is a *budget source,* by definition, that did not operate between May 1, 1990 and September 30, 1990, inclusive. A NO_x source, that is a *budget source* by definition, that was constructed prior to or during the period May 1, 1990 through September 30, 1990, but did not operate during the period May 1, 1990 through September 30, 1990, shall be treated as a *new budget source*.

gg. ***NO_x Allowance Tracking System* (*NATS*)** means the computerized system established and used by the *Administrator* to track the number of *allowances* held and used by any person.

hh. ***NO_x Emissions Tracking System* (*NETS*)** means the computerized system established and used by the *Administrator* to track and provide a permanent record of NO_x emissions from each *budget source*.

ii. ***Non-Part 75 Budget Source*** means any *budget source* not subject to the requirements for emissions monitoring adopted pursuant to Regulation 36 of the State of Delaware "**Regulations Governing the Control of Air Pollution**".

jj. ***Off budget*** means not subject to this regulation.

kk. ***Off budget source*** means any source of NO_x emissions that is not included in the NO_x Budget Program as either a *budget source*, by definition, or as an *opt in source*.

ll. ***Opt in*** means to choose to voluntarily participate in the NO_x Budget Program, and comply with the terms and conditions of this regulation.

mm. ***Opt-in-baseline*** means the Department approved *heat input* and/or NO_x emissions for use as a basis for *allowance allocation* and deduction.

nn. ***OTC*** means the Ozone Transport Commission.

oo. ***OTC MOU*** means the Memorandum of Understanding that was signed by representatives of eleven states and the District of Columbia on September 27, 1994.

pp. ***OTR*** means the Ozone Transport Region as designated by Section 184(a) of the Clean Air Act.

qq. ***Owner or Operator*** means any person who is an owner or who operates, controls or supervises a *budget source* and shall include, but not be limited to, any holding company, utility system or plant manager of a *budget source*.

rr. ***Quantifiable*** means a reliable and replicable basis for calculating the amount of an emission reduction that is acceptable to both the Department and to the Administrator of the U.S. EPA.

ss. ***Part 75 Budget Source*** means any *budget source* subject to the requirements for emissions monitoring adopted pursuant to Regulation 36 of the State of Delaware "**Regulations Governing the Control of Air Pollution**".

tt. ***Real*** means a reduction in the rate of emissions, quantified retrospectively, net of any consequential increase in actual emissions due to shifting demand.

uu. ***Recorded*** with regard to an *allowance transfer* or *deduction* means that an *account* in the *NATS* has been updated by the *Administrator* with the particulars of an *allowance transfer* or *deduction*.

vv. ***Regional NO_x budget*** means the maximum amount of NO_x emissions which may be released from all *budget sources,* collectively throughout the *OTR*, during a given *control period*.

ww. ***Repowering***, for the purpose of *early reduction credit* means either: 1) Qualifying Repowering Technology as defined by 40 CFR, Part 72 or; 2)

the replacement of a *budget source* by either a new combustion source or the purchase of heat or power from the owner of a new combustion source, provided that: a) The replacement source (regardless of owner) is on the same, or contiguous property as the *budget source* being replaced; b) The replacement source has a maximum heat output rate that is equal to or greater than the maximum heat output rate of the *budget source* being replaced; or, c) The replacement source has a power output rate that is equal to or greater than the power output rate of the combustion source being replaced; and d) The replacement source incorporates technology capable of controlling multiple combustion pollutants simultaneously with improved fuel efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

xx. ***Submitted*** means sent to the appropriate authority under the signature of the *authorized account representative* or alternate *authorized account representative*. An official U.S. Postal Service postmark, or electronic time stamp, shall establish the date of submittal.

yy. ***Surplus*** means that, at the time the reduction was made, the emission reduction was not required by Delaware's SIP, was not relied upon in an applicable attainment demonstration, was not required by state or federal permit or order, and was made enforceable in a permit that was issued after the date of the *OTC MOU* (September 27, 1994).

zz. ***Use*** means, for purposes of emission reductions moved off budget, that approval of the Department has been obtained to apply the emission reduction at a source.

12/11/99
Section 4 - Allowance Allocation

a. This program establishes NO_x emission *allowances* for each NO_x *control period* beginning May 1, 1999 through the NO_x *control period* ending September 30, 2002. *Allowance allocation* levels for each of these annual NO_x *control periods* are based on actual May 1, 1990 to September 30, 1990 actual NO_x mass emissions.

b. The NO_x Budget Program does not establish NO_x emission *allowances* for any NO_x *control period* subsequent to the year 2002 NO_x *control period.* NO_x emission *allowances* for each NO_x *control period* subsequent to the year 2002 NO_x *control period* will be established through follow-on regulation.

c. NO_x *allowance allocations* to *budget sources* may be made only by the Department in accordance with Section 4, Section 8, Section 12, and Section 18 of this regulation.

d. Appendix A of this regulation identifies the *budget sources* and identifies the number of *allowances* each *budget source* is *allocated*. *Allowance allocations* to each of the *budget sources* was determined as follows:

1. Unless otherwise noted in Appendix A of this regulation, the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory" served as the basis for determination of the number of *OTC MOU Allowances allocated* to each *existing budget source*.

i. Each *existing budget source's OTC MOU Allowance allocation* for NO_x *control periods* during the period May 1, 1999 to September 30, 2002, inclusive, was identified in the

referenced document, Appendix B, Final OTC NO_x Baseline Inventory, Delaware, Point-Segment Level Data, Phase II Target (Point Level).

ii. The identified values were rounded to the nearest whole *allowance* by rounding down for *allowances* less than 0.5 and rounding up for decimals of 0.5 or greater.

2. Exceptional Circumstances *Allowances*, as granted by the *OTC* and as identified in the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory" for the *existing budget sources*, are identified in Appendix A. These Exceptional Circumstance *Allowances* were adjusted for the appropriate NO_x emission rate reduction requirement prior to inclusion in Appendix A.

3. The *OTC* allocated to the state of Delaware an additional 86 *allowances*, referred to as reserve *allowances*, prior to application of NO_x emission rate reduction requirements, as its share of a total 10,000 ton reserve. Application of *OTC* required emission reductions resulted in a total of 35 Reserve *Allowances* available for distribution, as identified in the document EPA-454/R-95-013, "1990 OTC NO_x Baseline Emission Inventory".

i. Each of the 28 *existing budget sources* identified in Appendix A as the *existing budget sources* were allocated one (1) reserve *allowance*.

ii. One (1) additional reserve *allowance* was allocated to each of the four organizations with *existing budget sources*. The additional reserve *allowance* for each of the four organizations was added to the respective *existing budget source* with the greatest *heat input* rating.

iii. The remaining three (3) reserve *allowances* shall be held by the Department unused for the NO_x *control periods* between May 1, 1999 and September 30, 2002.

iv. Reserve *Allowances* are applicable only for the NO_x *control periods* during the period May 1, 1999 to September 30, 2002, inclusive. Reserve *Allowances* do not exist for NO_x *control periods* subsequent to the year 2002.

4. The final NO_x *allowance allocation* for each of the 28 *existing budget sources*, for each of the NO_x *control periods* during the period of May 1, 1999 and September 30, 2002, is the sum of the values determined in Sections 4(d)(1) - (3) and is identified in Appendix A. For the *existing budget sources* that were not identified in the document "1990 OTC NO_x Baseline Emissions Inventory", the final *allowance allocation* includes an *allowance allocation* determined in accordance with the procedures identified in Section 4(f)(2)(i) - (ii) of this regulation.

5. Known operating NO_x sources, that are *budget sources by definition,* that did not operate in the May 1, 1990 to September 30, 1990 period are identified in Appendix A with a final *allowance allocation* of zero (0) *allowances*.

e. *Budget sources* that receive a NO_x emission *allowance allocation* and subsequently cease to operate shall continue to receive *allowances* for each *control period* unless the allowances are reduced under Section 4(g)

of this regulation or a request to reallocate *allowances* has been approved in accordance with Section 11 of this regulation.

f. Any NO_x source, that is a *budget source* by definition, and that is not included in Attachment A of this regulation and which operated at any time between May 1, 1990 and September 30, 1990, inclusive, shall comply with the requirements of this regulation prior to operating in any NO_x *control period*.

1. The *owner or operator* shall submit to the Department an application including, as a minimum, the following information:

i. Identification of the source by plant name, address, and plant combustion unit number or equipment identification number.

ii. The name, address, telephone and facsimile number of the *authorized account representative* and, if desired, of an alternative authorized account representative.

iii. A list of the owners and operators of the source.

iv. A description of the source, including fuel type(s), maximum rated heat input capacity and electrical output rating where applicable.

v. Documentation of the May 1, 1990 - September 30, 1990 mass emissions (in tons), including:

A. Quantification of the mass emissions (in tons).

B. A description of the method used to determine the NO_x emissions.

C. Under no circumstances shall the emissions exceed any applicable federal or state emission limit.

vi. Documentation of the May 1, 1990 - September 30, 1990 *heat input* (in MMBTU), including:

A. Quantification of the *heat input* (in MMBTU/hr).

B. A description of the method used to determine the *heat input.*

C. The *heat input* shall be consistent with the *baseline control period* NO_x mass emissions determined in Section 4(f)(1)(v) of this regulation.

vii. Determination of the May 1, 1990 - September 30, 1990 NO_x emission rate, consistent with the guidelines of the "Procedures for Development of the OTC NO_x Baseline Emission Inventory", using the mass emissions identified in Section 4(f)(1)(v) of this regulation and the *heat input* identified in Section 4(f)(1)(vi) of this regulation.

viii. An emission monitoring plan in accordance with Section 13 of this regulation.

ix. A statement that the *submitted* information is representative of the true emissions during the May 1, 1990 - September 30,

1990 and that the source was operated in accordance with all applicable requirements during that time.

x. The following statement: *"I am authorized to make this submission on behalf of the owners and operators of the budget source for which this 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."*

xi. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

2. For sources that notify the Department that they are subject to this regulation no later than April 30, 1999, the Department shall *allocate* NO_x emissions *allowances* to the source as follows:

i. For *fossil fuel fired boilers* and *indirect heat exchangers* with a maximum *heat input* capacity of 250 MMBTU/hr or more, *allowance allocations* shall be determined as follows:

A. For sources located in New Castle and Kent counties, *allowance allocations* shall be based on the more stringent of the following:

1. The less stringent of:

a. The actual May 1, 1990 to September 30, 1990 mass emissions reduced by 65%; or,

b. The mass emissions resulting from the multiplication of the actual May 1, 1990 to September 30, 1990 heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

2. If an approved RACT emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 4(f)(2)(i)(A)(1)(a) and 4(f)(2)(i)(A)(1)(b), then the RACT value shall be the emissions limit for the NO_x Budget Program.

B. For sources located in Sussex county, *allowance allocations* shall be based on the more stringent of the following:

1. The less stringent of:

a. The actual May 1, 1990 to September 30, 1990 mass emissions reduced by 55%; or,

b. The mass emissions resulting from the multiplication of the actual May 1, 1990

to September 30, 1990 heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

2. If an approved RACT emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 4(f)(2)(i)(B)(1)(a) and 4(f)(2)(i)(B)(1)(b), then the RACT value shall be the emissions limit for the NO_x Budget Program.

ii. For *electric generating units* with a rated output of 15 MW or more that is not affected by Section 4(f)(2)(i) of this regulation, *allowance allocations* shall equal the more stringent of the May 1, 1990 to September 30, 1990 actual emissions or that derived from the application of an approved RACT limit to the actual May 1, 1990 to September 30, 1990 heat input value.

3. Within 60 days of receipt of the submittal, the Department shall review the submittal and take the following actions:

i. If the Department does not approve the submittal, the *authorized account representative* identified in the submittal shall be notified in writing of the finding and the reason(s) for the finding.

ii. If the Department approves the submittal, the Department shall:

A. Notify in writing the *authorized account representative* identified in the submittal.

B. The Department shall notify the *OTC* of the *allowance allocation* and authorize the *NATS Administrator* to open a *compliance account* for the subject source.

4. Any subject source that does not notify the Department prior to May 1, 1999, or that can not quantify its May 1, 1990 - September 30, 1990 emissions rate or heat input, shall be treated as a new *budget source* in accordance with Section 9 of this regulation.

5. Compliance with Section 4(f) of this regulation does not imply compliance nor sanction noncompliance with this regulation for prior NO_x *control period* operation.

g. If, after the effective date of this regulation, a *budget source* reduces *control period* emissions and said emission reductions are to be *used* by a source that is not a *budget source* (i.e. the emissions are moved off *budget*), that *budget source* shall request that the Department reduce its current year and future year allocation.

1. The request shall be *submitted* to the Department not later than the date that the request to *use* the emissions reduction at the *off budget source is submitted,* and shall include the following information, as a minimum:

i. The *compliance account* number of the *budget source* providing the emissions reduction.

ii. Identification of the NO_x source that is to *use* the emissions reduction, including:

A. Name and mailing address of the source.

B. Name, mailing address, and telephone number of a knowledgeable representative from that source.

iii. Identification of the calendar date for which the reduction of *current year* and future year allocations is to be effective, which shall not be later than the effective date of the *use* of the emissions reduction.

iv. A statement documenting the physical changes to the *budget source* or changes in the methods of operating the *budget source* which resulted in the reduction of NO_x emissions.

v. Quantification and justifying documentation of the NO_x emissions reduction, including a description of the methodology used to verify the emissions reduction.

vi. The quantity of *current year* and future year allocations to be reduced, which is the portion of the *control period* emissions reduction that is to move off budget.

vii. Certification by the *authorized account representative* or alternate *authorized account representative* including the following statement in verbatim: *"I am authorized to make this submission on behalf of the owners or operators of the NO_x source 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."*

viii. Signature of the *authorized account representative* or alternate *authorized account representative* of the *budget source* providing the emissions reduction and the date of signature.

2. Within 30 days of receipt of the submittal, the Department shall review the submittal and take the following actions:

i. If the Department does not approve the request, the *authorized account representative* identified on the submittal shall be notified in writing of the finding and the reason(s) for the finding.

ii. If the Department approves the request, the Department shall notify in writing the *authorized account representative* identified on the request and the following provisions apply:

A. The Department shall authorize the *NATS Administrator* to deduct from the *compliance account* of the *budget source* providing the emissions reduction the quantity of *current year* and future year *allowances* to be reduced.

B. The deducted *current year* and future year *allowances* shall be permanently retired from the NO_x Budget Program.

4/1/99
Section 5 - Permits

a. No later than the effective date of this regulation, the *owner or operator* of an *existing budget source* shall request amendment of any applicable construction or operating permit issued, or application for any permit submitted, in accordance with the State of Delaware "**Regulations Governing the Control of Air Pollution**". The amendment request shall include the following:

1. A condition(s) that requires the establishment of a *compliance account* in accordance with Section 6 of this regulation.

2. A condition(s) that requires NO_x mass emission monitoring during NO_x *control periods* in accordance with Section 13 of this regulation.

3. A condition(s) that requires NO_x mass emission reporting and other reporting requirements in accordance with Section 15 of this regulation.

4. A condition(s) that requires end-of-season *compliance account* reconciliation in accordance with Section 16 of this regulation.

5. A condition(s) that requires compliance certification in accordance with Section 17 of this regulation.

6. A condition(s) that prohibits the source from emitting NO_x during each NO_x *allowance control period* in excess of the amount of NO_x *allowances* held in the source's *compliance account* for the NO_x *allowance control period* as of December 31 of the subject year.

7. A condition(s) that authorizes the transfer of *allowances* for purposes of compliance with this regulation, containing reference to the source's *NATS* compliance account and the *authorized account representative* and alternate *authorized account representative*, if any.

b. Permit revisions/amendments shall not be required for changes in emissions that are authorized by *allowances* held in the *compliance account* provided that any transfer is in compliance with this regulation by December 31 of each year, is in compliance with the authorization for transfer contained in the permit, and does not affect any other applicable state or federal requirement.

c. Permit revisions/amendments shall not be required for changes in *allowances* held by the source which are acquired or transferred in compliance with this regulation and in compliance with the authorization for transfer in the permit.

d. Any equipment modification or change in operating practices taken to meet the requirements of this program shall be performed in accordance with all applicable state and federal requirements.

4/1/99
Section 6 - Establishment of Compliance Accounts

a. The *owner or operator* of each *existing budget source*, and each *new budget source*, shall designate one *authorized account representative* and, if desired, one alternate *authorized account representative* for that *budget source.* The *authorized account representative* or alternate *authorized account representative* shall submit to the Department an "Account Certificate of Representation".

1. For *existing budget sources*, initial designations shall be *submitted* no later than the effective date of this regulation.

2. For *new budget sources* that began operation prior to May 1, 1999, initial designations shall be *submitted* no later than April 30, 1999. For *new budget sources* that begin operation on or after May 1, 1999, initial designations shall be *submitted* no less than 30 days prior to the first hour of operation in a NO_x *control period*.

3. An *authorized account representative* or alternative account representative may be replaced at any time with the submittal of a new "Account Certificate of Representation". Notwithstanding any such change, all submissions, actions, and inactions by the previous *authorized account representative* or alternate *authorized account representative* prior to the date and time the *NATS Administrator* receives the superseding "Account Certificate of Representation" shall be binding on the new *authorized account representative,* on the new alternate *authorized account representative*, and on the *owners and operators* of the *budget source*.

4. Within 30 days following any change in *owner or operator*, *authorized account representative*, or any alternate *authorized account representative*, the *authorized account representative* or the alternate *authorized account representative* shall submit a revision to the "Account Certificate of Representation" amending the outdated information.

b. The "Account Certificate of Representation" shall be signed and dated by the *authorized account representative* or the alternate *authorized account representative* for the NO_x *budget source* and shall contain, as a minimum, the following information:

1. Identification of the NO_x *budget source* by plant name, address, and plant combustion unit number or equipment identification number for which the certification of representation is *submitted*.

2. The name, address, telephone and facsimile number of the *authorized account representative* and alternate authorized account representative, if applicable.

3. A list of the owners and operators of the NO_x *budget source*.

4. A description of the source, including fuel type(s), *maximum heat input capacity*, and electrical output rating where applicable.

5. The following statement: *"I am authorized to make this submission on behalf of the owners and operators of the budget source for which this 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."

6. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

c. The Department shall review all *submitted* "Account Certificate of Representation" forms. Within 30 days of receipt of the "Account Certificate of Representation", the Department shall take one of the following actions:

1. If not approved by the Department, the Department shall notify in writing the *authorized account representative* identified in the "Account Certificate of Representation" of the reason(s) for disapproval.

2. If approved by the Department, the Department shall forward the "Account Certificate of Representation" to the *NATS Administrator* and authorize the *NATS Administrator* to open/revise a *compliance account* for the *budget source*.

d. *Authorized account representative* and alternate *authorized account representative* designations or changes become effective upon the logged date of receipt of a completed "Account Certificate of Representation" by the *NATS Administrator*. The *NATS Administrator* shall acknowledge receipt and the effective date of the designation or changes by written correspondence to the *authorized account representative*.

e. The alternate *authorized account representative* shall have the same authority as the *authorized account representative*. Correspondence from the *NATS Administrator* shall be directed to the *authorized account representative*.

f. Only the *authorized account representative* or the alternate *authorized account representative* may request transfers of NO_x *allowances* in a *NATS account*. The *authorized account representative* shall be responsible for all transactions and reports *submitted* to the *NATS*.

4/1/99
Section 7 - Establishment of General Accounts

a. An *authorized account representative* and alternate *authorized account representative*, if any, shall be designated for each *general account* by the *general account* owners. Said representative shall have obligations similar to that of an *authorized account representative* of a *budget source*.

b. Any person or group of persons may open a *general account* in the *NATS* for the purpose of holding and transferring *allowances*. That person or group of persons shall submit to the Department an application to open a *general account*. The *general account* application shall include the following minimum information:

1. Organization or company name to be used for the general account name listed in the NATS, and type of organization (if applicable).

2. The name, address, telephone, and facsimile number of the *account*'s *authorized account representative* and alternate authorized account representative, if applicable.

3. A list of all persons subject to a binding agreement for the *authorized account representative* or alternate *authorized account representative* to represent their ownership interest with respect to the *allowances* held in the *general account*.

4. The following statement: *"I certify that I was selected under the terms of an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the NO_x allowance tracking system (NATS) account. I certify that I have all necessary authority to carry out my duties and responsibilities on behalf of the persons with ownership interest and that they shall be fully bound by my actions, inactions, or submissions under this regulation. I shall abide by my fiduciary responsibilities assigned pursuant to the binding agreement. I am authorized to make this submission on behalf of the persons with an ownership interest for whom this submission is made. I certify under penalty of law that I have personally examined and am familiar with the 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 information is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false material information, or omitting material information, including the possibility of fine or imprisonment for violations."*

5. Signature of the *general account's authorized account representative* or alternate *authorized account representative* and date of signature.

c. The Department shall review all *submitted general account* and revised *general account* applications. Within 30 days of receipt of the application, the Department shall take one of the following actions:

1. If not approved by the Department, the Department shall notify in writing the *authorized account representative* identified in the *general account* application of the reason(s) for disapproval.

2. If approved by the Department, the Department shall forward the *general account* application to the *NATS Administrator* and authorize the *NATS Administrator* to open/revise a *general account* in the organization or company name identified in the *general account* application.

d. No *allowance transfer* shall be *recorded* for a *general account* until the *NATS Administrator* has established the new *account*.

e. The *authorized account representative* or alternate *authorized account representative* of an established *general account* may transfer *allowances* at any time in accordance with Section 11 of this regulation.

f. An *authorized account representative* or alternative account representative of an existing *general account* may be replaced by submitting to the Department a revised *general account* application in accordance with Section 7(b) of this regulation.

g. The *authorized account representative* or alternate *authorized account representative* of a *general account* may apply to the Department to close the *general account* as follows:

1. By submitting a copy of an *allowance transfer* request to the *NATS Administrator* authorizing the transfer of all *allowances* held in the *account* to one or more other *account*s in the *NATS* and/or retiring allowances held in the account.

2. By submitting to the Department, in writing, a request to delete the *general account* from the *NATS*. The request shall be certified by the *authorized account representative* or alternate *authorized account representative*.

3. Upon approval, the Department shall authorize the *NATS Administrator* to close the *general account* and confirm closure in writing to the *general account*'s *authorized account representative*.

4/1/99
Section 8 - Opt In Provisions

Except as provided for in Section 4(g) of this regulation, the owner or operator of any stationary source in the state of Delaware that is not subject to the NO_x Budget Program by definition, may choose to *opt into* the NO_x Budget Program as follows:

a. The *owner or operator* of a stationary source who chooses to *opt into* the NO_x Budget Program shall submit to the Department an *opt-in* application. The *opt-in* application shall include, as a minimum, the following information:

1. Identification of the *opt-in* source by plant name, address, and plant combustion unit number or equipment identification number.

2. The name, address, telephone and facsimile number of the *authorized account representative* and, if desired, of an alternative authorized account representative.

3. A list of the owners and operators of the *opt-in* source.

4. A description of the *opt-in* source, including fuel type(s), maximum rated heat input capacity and electrical output rating where applicable.

5. Documentation of the *opt-in-baseline control period* mass emissions (in tons).

i. The *opt-in-baseline control period* emissions shall be the lower of the average of the mass emissions from the immediately preceding two consecutive NO_x *control periods* and the allowable emissions.

A. If the mass emissions from the preceding two *control periods* are not representative of normal operations, the Department may approve use of an alternative two consecutive NO_x *control periods* within the five years preceding the *date of the opt-in* application.

B. If the *opt-in* source does not have two consecutive years of operation, the *owner or operator* shall

identify the lower of the permitted allowable NO_x emissions and any applicable Federal or State emission limitation as the *opt-in-baseline* emissions.

ii. The documentation shall include:

A. Identification of the time period represented by the emissions data.

B. Quantification of the *opt-in-baseline control period* mass emissions (in tons).

C. A description of the method used to determine the *opt-in-baseline control period* NO_x emissions.

6. Documentation of the *opt-in-baseline* NO_x *control period heat input* (in MMBTU).

i. The *opt-in-baseline control period heat input* shall be consistent with the *opt-in-baseline control period* NO_x mass emissions determined in Section 8(a)(5) of this regulation.

ii. The documentation shall include:

A. Quantification of the *opt-in-baseline control period heat input* (in MMBTU/hr).

B. A description of the method used to determine the *opt-in-baseline control period heat input.*

7. Determination of the *opt-in-baseline* NO_x emission rate, consistent with the guidelines of the "Procedures for Development of the OTC NO_x Baseline Emission Inventory", using the *opt-in-baseline control period* mass emissions identified in Section 8(a)(5) of this regulation and the *opt-in-baseline* NO_x *control period heat input* identified in Section 8(a)(6) of this regulation.

8. An emission monitoring plan in accordance with Section 13 of this regulation.

9. A statement that the source was operated in accordance with all applicable requirements during the *control periods*.

10. The following statement: *"I am authorized to make this submission on behalf of the owners and operators of the budget source for which this 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."*

11. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

b. Within 60 days of receipt of any *opt-in* application, the Department shall take the following actions:

1. The Department shall review the application for completeness and accuracy and:

   i. Verify that the monitoring methods used to determine the *opt-in-baseline control period* NO_x mass emissions and the *opt-in-baseline* NO_x *control period heat input* are consistent with those described in Section 13 of this regulation.

   ii. Verify that the *opt-in-baseline* emissions were calculated in accordance with the guidelines in the "Procedures for Development of the OTC NO_x Baseline Emission Inventory".

2. If the Department disapproves the *opt-in* application, the *authorized account representative* identified in the *opt-in* application shall be notified in writing of the determination and the reason(s) for the application not being approved.

3. If the Department determines that the *opt-in* application is acceptable, the Department shall request the *OTC* Stationary/Area Source Committee to review the application. Within 30 days of receiving the *OTC* Stationary/Area Source Committee comments, the Department shall consider the comments and take the following action:

   i. If it is determined that the *opt-in* application does not properly justify opting the source into the NO_x Budget Program, the Department shall notify the *authorized account representative* in writing of the determination and the reason(s) for the application not being accepted.

   ii. If it is determined that the *opt-in* application justifies opting the source into the NO_x Budget Program, the Department shall notify the *authorized account representative* in writing of that determination.

c. The Department shall assign an *allowance allocation* to any *owner or operator* that has been approved by the Department to *opt into* the NO_x Budget Program.

   1. The *allowance allocation* for an *opt-in* source, that is not considered a *budget source* by definition, shall be equal to the more stringent of the *opt-in-baseline control period* emissions or the allowable NO_x emissions from the source.

   2. The *allowance allocation* for an *opt-in* source that has a maximum *heat input* rating of 250 MMBTU/hr shall be determined as follows:

      i. For sources located in New Castle and Kent counties, *allowance allocations* shall be based on the more stringent of the following:

         A. The less stringent of:

            1. The *opt-in-baseline* actual mass emissions reduced by 65%; or,

            2. The mass emissions resulting from the multiplication of the actual *opt-in-baseline* heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

B. If any permitted NO_x emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 8(c)(2)(i)(A)(1) and 8(c)(2)(i)(A)(2), then the permitted emissions limit shall be used to determine the emissions limitation for the NO_x Budget Program.

ii. For sources located in Sussex county, *allowance allocations* shall be based on the more stringent of the following:

A. The less stringent of:

1. The *opt-in-baseline* actual mass emissions reduced by 55%; or,

2. The mass emissions resulting from the multiplication of the actual *opt-in-baseline* heat input by a NO_x emissions rate of 0.20 lb/MMBTU.

B. If any permitted NO_x emissions limit results in emissions that are lower than the less stringent of the limits calculated in Sections 8(c)(2)(ii)(A)(1) and 8(c)(2)(ii)(A)(2), then the permitted emissions limit shall be used to determine the emissions limitation for the NO_x Budget Program.

3. If the *owner or operator* of an *opt-in* source is required to obtain NO_x emissions offsets in accordance with Regulation 25 of the State of Delaware "**Regulations Governing the Control of Air Pollution**", the *allowance allocation* calculated under Section 8(c)(1) or (2)of this regulation shall be reduced by the portion of the *control period* emission reduction that is associated with any *budget source*.

4. The *allowance allocation* associated with the *opt-in* source shall be added to Delaware's NO_x *budget* prior to *allocation* of *allowances* to the *opt-in* source. This regulation shall be revised to reflect changes in the number of allowances in the NO_x Budget Program.

5. Under no circumstances shall the *allocation* of *allowances* to a source which chooses to *opt into* the program require adjustments to the *allocation* of *allowances* to *budget sources* in the NO_x Budget Program.

d. Upon the approval of the *opt-in* application and assignment of an *allowance allocation*, the Department shall authorize the *NATS Administrator* to open a *compliance account* for the *opt-in* source in accordance with Section 10 of this regulation.

e. Within 30 days of approval to *opt into* the NO_x Budget Program, any *owner or operator* shall apply for a permit, or the modification of applicable permits, in accordance with Section 5 of this regulation.

f. Upon approval of the *opt-in* application and establishment of the *compliance account*, the *owner or operator* of the source shall be subject to all applicable requirements of this regulation including the requirements for *allowance transfer* or deduction, emissions monitoring, record keeping, reporting, and penalties.

1. A certification test notice and test protocol shall be *submitted* to the Department no later than 90 days prior to anticipated performance of the certification testing.

2. Certification testing shall be completed prior to operation in the next NO_x *control period* following approval of the source to *opt into* the NO_x Budget Program.

3. A certification test report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" shall be *submitted* to the Department no later than 45 days following the performance of the certification testing.

g. Any *owner or operator* approved to *opt into* the NO_x Budget Program that did not have two consecutive years of operation upon initial application and determined *opt-in-baseline* emissions in accordance with Section 8(a)(5)(i)(B) of this regulation shall submit to the Department a revised *opt-in* application.

1. The revised *opt-in* application shall be *submitted* no more than 60 days following first completion of operation in two consecutive NO_x *control periods*.

2. The revised *opt-in* application shall provide actual operating information, including NO_x mass emissions and *heat input,* for each of the two NO_x *control periods*.

3. Within 60 days of receipt on any revised *opt-in* application, the Department shall review the revised *opt-in* application and take the following actions:

i. If the Department does not approve the revised *opt-in* application:

A. The Department shall notify the *opt-in source's authorized account representative* of the determination in writing and indicate the reason(s) for the determination.

B. The *opt-in source's authorized account representative* shall resolve the Department's comments and an updated revised *opt-in* application shall be submitted to the Department no more than 60 days from the Department's request.

C. Upon approval of any updated revised *opt-in* application, the Department shall process the application in accordance with Section 8(g)(3)(ii) of this regulation.

ii. If the Department is in concurrence with the revised *opt-in* application, the following actions shall be taken:

A. The Department shall request the *OTC* Stationary/Area Source Committee to comment on the revised *opt-in* application. Within 30 days of receiving the *OTC* Stationary/Area Source Committee comments, the Department shall consider the comments and take action in accordance with Section 8(g)(3)(ii)(B) or Section 8(g)(3)(ii)(C) of this regulation.

B. If it is determined that the revised *opt-in* application shall not be approved:

1. The Department shall notify the *opt-in source's authorized account representative* of the determination in writing and indicate the reason(s) for the determination.

2. The *opt-in source's authorized account representative* or alternate *authorized account representative* shall resolve the Department's comments and an updated revised *opt-in* application shall be submitted to the Department no more than 60 days from the Department's request.

3. Upon approval of any updated revised *opt-in* application, the Department shall process the application in accordance with Section 8(g)(3)(ii)(C) of this regulation.

C. If it is determined that the revised *opt-in* shall be approved, the following actions shall be taken:

1. If the initial *allocation* was lower than that indicated in the revised application:

a. The Department shall revise the NO_x *budget* to reflect the *allocation* determination identified in the revised *opt-in* application.

b. The Department shall authorize the *NATS Administrator* to revise the *allocation* to the subject source's *compliance account*.

c. The Department shall not authorize any additional allowances to cover any shortfall in the two *opt-in-baseline* NO_x *control periods*. Any violation of a permit condition or of this regulation may result in an enforcement action.

2. If the initial *allocation* was higher than that indicated in the revised application:

a. The Department shall revise the NO_x *budget* to reflect the allocation determination identified in the revised *opt-in* application.

b. The Department shall authorize the *NATS Administrator* to revise the *allocation* to the subject source's *compliance account*.

c. The Department shall authorize the *NATS Administrator* to deduct the excess *allowances allocated* to the *opt-in* source, calculated as the difference between the actual *allocated allowances* and the *allowances allocated* on the basis of the

revised *opt-in* application for the years of operation in NO_x *control periods*.

h. Any *owner or operator* who chooses to *opt into* the NO_x Budget Program can not opt-out of the program unless NO_x emitting operations at the *opt-in* source have ceased, and the *allowance* adjustment provisions of Section 8(i) of this regulation apply.

i. Any *owner or operator* who chooses to *opt into* the NO_x Budget Program and who subsequently chooses to cease or curtail operations during any NO_x *allowance control period* after opting-in shall be subject to an *allowance* adjustment equivalent to the NO_x emissions decrease that results from the shut down or curtailment.

1. The *NETS Administrator* shall compare actual *heat input* data following each NO_x *control period* with the *opt-in-baseline heat input* for each *opt-in* source.

2. The *NATS Administrator* shall calculate and deduct *allowances* equivalent to any decrease in the *opt-in* source's *heat input* below its *opt-in-baseline heat input*. This deduction shall be calculated using the average of the two most recent years *heat input* compared to the *heat input* used in the *opt-in-baseline* calculation.

3. The *NATS Administrator* shall notify the NO_x *budget source's authorized account representative* and the Department of any such deductions.

4. This adjustment affects only the *current year allocation* and shall not effect the NO_x *budget source's allocations* for future years.

5. No deduction shall result from reducing NO_x emission rates below the rate used in the *opt-in allowance* calculation.

6. A source that is to be repowered or replaced can be opted into the NO_x Budget Program without the shutdown/curtailment deductions. The *heat input* for the repowered or replaced source can be substituted for the present year's activity for the *opt-in* NO_x *allowance* adjustment calculation.

j. For replacement sources, all sources under common control in the State of Delaware to which production may be shifted shall be opted-in together.

k. When an *opt-in* source undergoes reconstruction or modification such that the source becomes a *budget source* by definition:

1. The *opt-in* source's *authorized account representative* or alternate *authorized account representative* shall notify the Department within 30 days of completion of the modification or reconstruction.

2. The Department shall authorize the *NATS Administrator* to deduct *allowances* equal to those allocated to the *opt-in* source in the NO_x *control period* for the calendar year in which the *opt-in* source becomes a *budget source* by definition.

3. The Department shall authorize the *NATS Administrator* to deduct all *allowances* that were allocated pursuant to Section 8(c) of this regulation to the *opt-in* source, for all future years

following the calendar year in which the *opt-in* source becomes a *budget source* by definition. This regulation shall be revised to reflect changes in the number of allowances in the NO_x Budget Program.

4. The reconstructed or modified source shall be treated as a *new budget source* in accordance with Section 9 of this Regulation.

4/1/99
Section 9 - New Budget Source Provisions

a. NO_x *allowances* shall not be created for new NO_x sources that are *budget sources* by definition. The *owner or operator* is responsible to acquire any required NO_x *allowances* from the *NATS*.

b. The *owner or operator* of a *new budget source* shall establish a compliance account and be in compliance with all applicable requirements of this regulation prior to the commencement of operation in any NO_x *control period*. *New budget sources* shall:

1. Request a permit/permit amendment meeting the requirements of Section 5 of this regulation no less than 90 days prior to operation in any NO_x *control period*.

2. Submit a monitoring plan to the Department, in accordance with Section 13 of this regulation, no later than 90 days prior to the anticipated performance of monitoring system certification.

3. Install and operate an approved monitoring system(s) to measure, record, and report hourly and cumulative NO_x mass emissions.

4. *Submit* to the Department a certification test notice and protocol no later than 90 days prior to the anticipated performance of the certification testing.

5. Complete the monitoring system certification prior to operation in any NO_x *control period*.

6. *Submit* to the Department a certification test report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" no later than 45 days following the performance of the certification testing.

4/1/99
Section 10 - NO_x Allowance Tracking System (NATS)

a. The *NO_x allowance tracking system* is an electronic recordkeeping and reporting system which is the official database for all NO_x *allowance* deduction and transfer within this program. The *NATS* shall track:

1. The *allowances* allocated to each *budget source*.

2. The *allowances* held in each *account*.

3. The *allowances* deducted from each *budget source* during each *control period*, as requested by a transfer request submitted by the *budget source's authorized account representative* or alternate *authorized account representative* in accordance with Section 16(b) of this regulation.

4. *Compliance accounts* established for each *budget source* to determine the compliance for the source, including the following information:

   i. The *account number* of the *compliance account*.

   ii. The name(s), address(es), and telephone number(s) of the *account* owner (s).

   iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.

   iv. The name and street address of the associated *budget source*, and the state in which the *budget source* is located.

   v. The number of *allowances* held in the *account*.

5. *General accounts* opened by individuals or entities, upon request, which are not used to determine compliance, including the following information:

   i. The *account* number of the *general account*.

   ii. The name(s), address(es) and telephone number(s) of the *account* owner(s).

   iii. The name, address, and telephone number of the *authorized account representative* and alternate *authorized account representative*, as applicable.

   iv. The number of *allowances* held in the *account*.

6. *Allowance transfers*.

7. Deductions of *allowances* by the *NATS Administrator* for compliance purposes, in accordance with Section 16(d) of this regulation.

b. The *NATS* Administrator shall establish *compliance* and *general accounts* when authorized to do so by the Department pursuant to Sections 6, 7, and 8 of this regulation.

c. Each *compliance account* and *general account* shall have a unique identification number and each *allowance* shall be assigned a unique serial number. Each *allowance* serial number shall indicate the year of *allocation*.

4/1/99
Section 11 - Allowance Transfer

a. *Allowances* may be transferred at any time during any year, not just the *current year*.

b. The transfer of *allowances* between *budget sources* in different states for purposes of compliance is contingent upon the adoption and implementation by those states of NO_x *budget* program regulations and their participation in the *NATS*.

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c. Transfer requests shall be *submitted* to the *NATS Administrator* on a form or electronic media, as directed by the *NATS Administrator*, and shall include the following information:

1. The *account number* of the originating *account* and the acquiring *account*.

2. The name(s) and address(s) of the owner(s) of the originating *account* and the acquiring *account*.

3. The serial number of each *allowance* being transferred.

4. The following statement from the *authorized account representative* or alternate *authorized account representative* of the originating *account*, in verbatim: *"I am authorized to make this submission on behalf of the owners or operators of the budget source 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."*

5. Signature of the *authorized account representative* or alternate *authorized account representative* of the originating account and the date of signature.

d. The *Authorized account representative* or alternate *authorized account representative* for the originating *account* shall further provide a copy of the transfer request to each *owner or operator* of the *budget source*.

e. Transfer requests shall be processed by the *NATS Administrator* in order of receipt.

f. A transfer request shall be determined to be valid by the *NATS Administrator* if:

1. Each *allowance* listed in the transfer request is held by the originating *account* at the time the transfer is to be *recorded*.

2. The acquiring party has an *account* in the *NATS*.

3. The transfer request has been certified by the person named as *authorized account representative* or alternate *authorized account representative* for the originating *account*.

g. Transfer requests judged valid by the *NATS Administrator* shall be completed and *recorded* in the *NATS* by deducting the specified *allowances* from the originating *account* and adding them to the acquiring *account*.

h. Transfer requests judged to be invalid by the *NATS Administrator* shall be returned to the *authorized account representative* indicated on the transfer request along with documentation why the transfer request was judged to be invalid.

i. The *NATS Administrator* shall provide notification of an *allowance* transfer to the *authorized account representative*s of the originating *account*, the *authorized account representative* of the acquiring *account*, and the Department, including the following information:

1. The effective date of transfer.

2. Identification of the originating *account* and acquiring *account* by name as well as by *account number*.

3. The number of *allowances* transferred and their serial numbers.

j. The *authorized account representative* or alternate *authorized account representative* of a *compliance account* or a *general account* may request that some or all allocated *allowances* be transferred to another *compliance account* or to a *general account* for the current year, any future year, block of years, or for the duration of the program. The *authorized account representative* or alternate *authorized account representative* of the originating *account* shall submit a request for transfer that states this intent to the *NATS Administrator*, and the transfer request shall conform to the requirements of this Section. In addition, the request for transfer shall be *submitted* to the Department with a letter requesting that the *budget* be revised to reflect the change in *allowance* allocations.

k. Upon request by the Department any *authorized account representative* or alternate *authorized account representative* shall make available to the Department information regarding transaction cost and *allowance* price.

4/1/99
Section 12 - Allowance Banking

a. The *banking* of *allowances* is permitted to allow retention of unused *allowances* from one year to a future year in either a *compliance account* or a *general account*.

b. Except for *allowances* created under Section 12(d) of this regulation, *allowances* not used under Section 16 of this regulation shall be held in a *compliance account* or *general account* and designated as *"banked" allowances* by the *NATS Administrator*.

c. The use of *banked allowances* shall be restricted as follows:

1. By March 1 of each year the *NATS Administrator* shall divide the total number of *banked allowances* by the regional NO_x *budget*.

i. If the total number of *banked allowances* in the *NATS* is less than or equal to 10% of the regional NO_x *budget* for the *current year control period*, all *banked allowances* can be deducted in the *current year* on a 1-for-1 basis.

ii. If the total number of *banked allowances* in the *NATS* exceeds 10% of the regional NO_x *budget* for the *current year control period*, *budget sources* shall be notified by the *NATS Administrator* of the *allowance* ratio which must be applied to *banked allowance* in each *compliance account* and *general account* to determine the number of *allowances* available for deduction in the *current year control period* on a 1-for-1 basis and the number of *allowances* available for deduction on a 2-for-1 basis.

2. Where a finding has been made by the *NATS Administrator* that *banked allowances* exceed 10% of the *current year regional* NO_x *budget*, each *NATS compliance account* and *general account* of *banked allowances* shall be subject to the following *banked allowance* deduction protocol:

i. A ratio shall be established according to the following formula:

$$\frac{0.10 \times \text{the regional } NO_x \text{ Budget}}{\text{the total number of } \textit{banked allowances} \text{ in the region}}$$

ii. The ratio calculated in Section 12(c)(2)(i) of this regulation shall be applied to the *banked allowances* in each *account*. The resulting number is the number of *banked allowances* in the *account* which can be used in the *current year control period* on a 1-for-1 basis. *Banked allowances* in excess of this number, if used, shall be used on a 2-for-1 basis.

d. The *owner or operator* of an *existing budget source* may apply to the Department to receive *early reduction allowances* for actual NO_x reductions occurring in 1997 and/or 1998.

1. No later than the effective date of this regulation, the *authorized account representative* or alternate *authorized account representative* from any *budget source* seeking *early reduction allowances* shall submit to the Department an application that includes, at a minimum, the following information:

i. Identification of the *budget source*.

ii. Identification of the calendar time period for which *early reduction allowances* are being sought (i.e., May 1 - September 30, 1997, May 1 - September 30, 1998, or both).

iii. Identification of the *baseline* NO_x *control period* emission limit (tons), which shall be the more stringent of the following:

A. The level of control required by the *OTC MOU*;

B. The lower of the permitted allowable emissions for the source and the allowable emissions identified in the state implementation plan (SIP);

C. The actual emissions for the 1990 *control period*, or;

D. The actual emissions for the average of two representative year *control periods* within the first five years of operation if the *budget source* did not commence operation until after 1990.

iv. The *baseline* NO_x *control period heat input* (MMBTU) corresponding to the *baseline* NO_x *control period* emission limit (tons) determined in Section 12(d)(1)(iii) of this regulation.

v. The actual NO_x *control period* NO_x emissions (tons) occurring in 1997 and/or 1998, as applicable.

vi. The actual NO_x *control period heat input* (MMBTU) occurring in 1997 and/or 1998, as applicable.

vii. The calculated NO_x *control period* emissions rate (lb/MMBTU), as determined using the *control period* NO_x emissions identified in Section 12(d)(1)(v) of this regulation multiplied by 2000 to obtain actual emissions in pounds (lbs), divided by the *control period heat input* (MMBTU) identified in Section 12(d)(1)(vi) of this regulation.

viii. The amount of NO_x emissions *early reduction allowances* shall be calculated by subtracting the actual *control period* NO_x emissions (in tons), identified in Section 12(d)(1)(v)of this regulation, from the *baseline* NO_x emissions limit (in tons) identified in Section 12(d)(1)(iii) of this regulation.

ix. If the actual *control period heat input*, as identified in Section 12(d)(1)(vi) of this regulation, is less than the *baseline* NO_x *control period heat input,* as identified in Section 12(d)(1)(iv) of this regulation, the NO_x emissions *early reduction allowances* determined in Section 12(d)(1)(viii) of this regulation shall be corrected as follows:

A. The actual *control period heat input* (MMBTU), as identified in Section 12(d)(1)(vi) of this regulation, shall be subtracted from the *baseline* NO_x *control period heat input* (MMBTU), as identified in Section 12(d)(1)(iv) of this regulation, to obtain the *heat input* correction.

B. The *heat input* correction (MMBTU) is multiplied by the calculated NO_x *control period* emissions rate (lb/MMBTU) determined in Section 12(d)(1)(vii) of this regulation. The resulting value is divided by 2000 to obtain tons of NO_x.

C. The corrected NO_x emissions *early reduction allowance* is the result of subtracting the results of Section 12(d)(1)(ix)(B) of this regulation from the NO_x emissions *early reduction allowances* calculated in Section 12(d)(1)(viii) of this regulation.

x. A statement indicating the *budget source* was operating in accordance with all applicable requirements during the applicable NO_x *control period* including:

A. Whether the monitoring plan that was *submitted* in accordance with Section 13 of this regulation was maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute monitored emissions to the *budget source*. If *early reduction allowances* are being sought for a *control period* prior to the implementation of monitoring in accordance with Section 13(a) of this regulation, a monitoring plan prepared in accordance with Section 13(a) of this regulation shall be *submitted* describing the monitoring method in use during the *control period* for which *early reduction allowances* are being sought.

B. Whether all the emissions from the *budget source* were monitored, or accounted for, throughout the NO_x *control period* and reported.

C. Whether the information that formed the basis for certification of the emissions monitoring plan has changed affecting the certification of the monitoring.

D. If a change in the monitoring method is reported under Section 12(d)(1)(x)(C) of this regulation, specify the nature of the change, the reason for the change, when the change occurred, and what method was used to determine emissions during the period mandated by the change.

xi. A statement documenting the specific physical changes to the *budget source* or changes in the methods of operating the *budget source* which resulted in the reduction of emissions.

xii. The following statement: *"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."*

xiii. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

2. *Early reduction allowance* requests shall be reviewed by the Department.

i. If the Department determines that the emissions reductions were not enforceable, *real*, *quantifiable*, or *surplus*, the Department shall notify the *budget source's authorized account representative* in writing, indicating the reason(s) the request for *early reduction allowances* is being denied.

ii. If the Department determines that the emissions reductions are enforceable, *real*, *quantifiable*, and *surplus*:

A. The Department shall request the *OTC* Stationary/Area Source Committee to comment on the generation of potential *early reduction allowances*.

B. The Department shall consider the *OTC* Stationary/Area Source Committee comments and either:

1. Notify the *budget source's authorized account representative* in writing denying the request for *early reduction allowances* and indicate the reason(s) for the determination; or

2. Notify the *budget source's authorized account representative* in writing that the requested

emissions reduction *allowances* shall be added to the *budget source's account*; and

3. Authorize the *NATS Administrator* to add the *allowances* to the *budget source's* account as 1999 *allowance*s.

3. Reductions associated with *repowering* of a *budget source* are eligible for *early reduction credit* provided that the permit for construction of the replacement source was issued after the date of the *OTC MOU* (September 27, 1994), and the *budget source* being replaced ceases operation in 1997 or 1998.

4. No later than October 1, 1999, the Department shall publish a report which documents the applicable sources and the number of *early reduction credits* awarded.

4/1/99
Section 13 - Emission Monitoring

a. NO_x emissions from each *budget source* shall be monitored in accordance with this section and in accordance with the requirements of the *OTC* documents titled "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program", dated January 28, 1997, and "NO_x Budget Program Monitoring Certification and Reporting Instructions", dated July 3, 1997. The provisions of these documents are hereby adopted by reference.

b. Monitoring systems are subject to initial performance testing and periodic calibration, accuracy testing, and quality assurance/quality control testing as specified in the *OTC* document titled "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program". If an *owner or operator* uses certified monitoring systems under Part 75 to meet the requirements of this program and maintains and operates those monitoring systems according to the requirements of Part 75, it is not necessary to re-perform initial certification tests to ensure the accuracy of these components under the NO_x Budget Program.

c. During a period when valid data is not being recorded by devices approved for use to demonstrate compliance with the requirements of this section, the *owner or operator* shall provide substitute data in accordance with the requirements of:

1. For *Part 75 budget sources*, the procedures of 40 CFR Part 75, Subpart D, and Part 1 of the *OTC* document titled "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

2. For *non-Part 75 budget sources*, the procedures of Part 2 of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" except for those provisions in this document that allow alternative methods or procedures. Any alternative methods or procedures must be reviewed and approved by the Department and EPA.

d. The *owner or operator* of a NO_x *budget source* shall meet the following emissions monitoring deadlines:

1. All existing *Part 75* NO_x *budget sources* not required by the NO_x Budget Program to install additional monitoring equipment, or required to only make software changes to implement the additional

requirements of this program, shall meet the monitoring requirements of the NO_x Budget Program as follows:

i. By meeting all current Part 75 monitoring requirements during the NO_x *control period* during each calendar year.

ii. By monitoring hourly and cumulative NO_x mass emissions for the NO_x *control period* in each calendar year starting in 1999 in accordance with the *OTC* documents "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

2. All existing *Part 75 budget sources* required to install and certify new monitoring systems to meet the requirements of the NO_x Budget Program shall meet the monitoring requirements of this program as follows:

i. By meeting all current Part 75 monitoring requirements during the NO_x *control period* during each calendar year.

ii. Reserved

iii. By monitoring hourly and cumulative NO_x mass emissions using certified monitoring systems for each NO_x *control period* each calendar year starting in 1999 in accordance with the *OTC* documents "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

3. All *existing non-Part 75 budget sources* shall meet the monitoring requirements of the NO_x Budget Program as follows:

i. Reserved

ii. By monitoring hourly and cumulative NO_x mass emissions using certified monitoring systems for each NO_x *control period* of each calendar year starting in 1999 in accordance with the *OTC* documents "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

e. The *owner or operator* of a *budget source* subject to 40 CFR Part 75 shall demonstrate compliance with this section with a certified Part 75 monitoring system.

1. The *authorized account representative* or alternate *authorized account representative* shall submit to the Department a monitoring plan prepared in accordance with 40 CFR Part 75 and the additional requirements of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions".

i. All existing *Part 75 budget sources* not required to install additional monitoring equipment shall submit to the Department a complete hardcopy monitoring plan containing monitoring plan changes and additions required by the NO_x Budget Program no later than the effective date of this

regulation. These *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

ii. For any *Part 75 budget source* required to install and certify new monitoring systems, submit to the Department a complete hardcopy monitoring plan acceptable to the Department at least 45 days prior to the initiation of certification tests for the new system(s). These *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

iii. For *new budget sources* under 40 CFR Part 75, submit to the Department the NO_x Budget Program information with the hardcopy Acid Rain Program monitoring plan no later than 90 days prior to the projected Acid Rain Program participation date. These new *Part 75 budget sources* shall also submit to the Department a complete electronic monitoring plan upon request by the Department.

2. The *authorized account representative* or alternate *authorized account representative* shall obtain certification of the NO_x emissions monitoring system in accordance with 40 CFR Part 75 and the additional requirements of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions".

i. If the *Part 75 budget source* uses certified monitoring systems under Part 75 to meet the requirements of the NO_x Budget Program and maintains and operates those monitoring systems according to the requirements of Part 75, it is not necessary to re-perform initial certification tests to ensure the accuracy of the monitoring systems under the NO_x Budget Program.

A. Formula verifications must be performed to demonstrate that the data acquisition system accurately calculates and reports NO_x mass emissions (lb/hr) based on hourly *heat input* (MMBTU/hr) and NO_x emission rate (lb/MMBTU).

B. Formula verifications shall be *submitted* to the Department no later than the effective date of this regulation.

ii. If it is necessary for the *owner or operator* of a *Part 75 budget source* to install and operate additional NO_x or flow systems or fuel flow systems because of stack and unit configuration, the *owner or operator* must certify the monitoring systems using the procedures of 40 CFR Part 75.

A. Successful certification testing of the monitoring system in accordance with the requirements of 40 CFR Part 75 shall be completed no later than April 30, 1999.

B. A certification test notice and protocol shall be *submitted* to the Department for approval prior to the anticipated performance of the certification testing,

but no later than the effective date of this regulation.

C. A certification report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" shall be *submitted* to the Department no later than 45 days following the performance of the certification testing.

3. If the *Part 75 budget source* has a flow monitor certified under Part 75, NO_x emissions in pounds per hour shall be determined using the Part 75 NO_x *CEMS* and the flow monitor. The NO_x emission rate in pounds per million BTU shall be determined using the procedure in 40 CFR Part 75, Appendix F, Section 3. The hourly *heat input* shall be determined by using the procedures in 40 CFR Part 75, Appendix F, Section 5. The NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) by the *heat input* rate (in million BTU per hour).

4. If the *Part 75 budget source* does not have a certified flow monitor, but does have a certified NO_x *CEMS*, the NO_x emissions rate in pounds per hour shall be determined by using the NO_x *CEMS* to determine the NO_x emission rate in pounds per million BTU and the *heat input* shall be determined by using the procedures in 40 CFR Part 75, Appendix D. The NO_x emissions rate (in pounds per hour) shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) by the *heat input* rate (in million BTU per hour).

5. If the *Part 75 budget source* uses the procedures in 40 CFR Part 75, Appendix E, to determine the NO_x emission rate, the NO_x emissions in pounds per hour shall be determined by multiplying the NO_x emissions rate (in pounds per million BTU) determined using the Appendix E procedures times the *heat input* (in million BTU per hour) determined using the procedures in 40 CFR Part 75, Appendix D.

6. If the *Part 75 budget source* uses the procedures in 40 CFR Part 75, Subpart E, to determine NO_x emission rate, the NO_x emissions in pounds per hour shall be determined using the alternative monitoring method approved under 40 CFR Part 75, Subpart E, and the procedures contained in the *OTC* document titled "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

7. The relevant procedures of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" shall be employed for unusual or complicated stack configurations.

f. The *owner or operator* of a *budget source* not subject to 40 CFR Part 75 shall seek the use of a NO_x monitoring method to comply with this regulation as follows:

1. The *authorized account representative* or alternate *authorized account representative* shall prepare and submit to the Department for approval a hardcopy monitoring plan for each NO_x *budget source*. Upon request by the Department, the *authorized account representative* or alternate *authorized account representative*

shall also submit to the Department a complete electronic monitoring plan. Sources subject to the program on the effective date of this regulation shall submit the complete monitoring plan no later than the effective date of this regulation. Sources becoming subject to the *budget* program after the effective date of this regulation must submit a complete monitoring plan no later than 90 days prior to projected initial participation date. The monitoring plan shall be prepared in accordance with the requirements of the *OTC* documents "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring and Certification and Reporting Instructions", and shall contain the following information, as a minimum:

i. A description of the monitoring method to be used.

ii. A description of the major components of the monitoring system including the manufacturer, serial number of the component, the measurement span of the component and documentation to demonstrate that the measurement span of each component is appropriate to measure all of the expected values. This requirement applies to all monitoring systems including NO_x *CEMS* which have not been certified pursuant to 40 CFR Part 75.

iii. An estimate of the accuracy of the system and documentation to demonstrate how the estimate of accuracy was determined. This requirement applies to all monitoring systems that are not installed/being installed in accordance with the requirements of 40 CFR Part 75.

iv. A description of the tests that will be used for initial certification, initial quality assurance, periodic quality assurance, and relative accuracy.

v. If the monitoring method of determining *heat input* involves *boiler* efficiency testing, a description of the tests to determine *boiler* efficiency.

vi. If the monitoring method uses fuel sampling, a description of the test to be used in the fuel sampling program.

vii. If the monitoring method utilizes a generic default emission rate factor, the monitoring plan shall identify the generic default emission rate factor and provide documentation of the applicability of the generic default emission rate factor to the *non-Part 75 budget source*.

viii. If the monitoring method utilizes a unit specific default emission rate factor the monitoring plan shall include the following:

A. All necessary information to support the emission rate including:

1. Historical fuel use data and historical emissions test data if previous testing has been performed prior to May 1, 1997 to meet other state or federal requirements and the testing was performed using Department approved methods and protocols; or

2. If emissions testing is performed to determine the emission rate, include a test protocol explaining the test to be conducted. All test performed on or after May 1, 1997 must meet the requirements of 40 CFR Part 75, Appendix E, and the requirements of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

B. Procedures which will be utilized to demonstrate that any control equipment in operation during the testing to develop source specific emission factors, or during development of load-based emission curves, are in use when those emission factors are applied to estimate NO_x emissions.

C. Alternative uncontrolled emission rates to be used to estimate NO_x emissions during periods when control equipment is not being used or is inoperable.

ix. If the monitoring method utilizes fuel flow meters to determine *heat input* and said meters have not been certified pursuant to 40 CFR Part 75, the monitoring plan shall include a description of all components of the fuel flow meter, the estimated accuracy of the fuel flow meter, the most recent calibration of each of the components and the original accuracy specifications from the manufacturer of the fuel flow meter.

x. The *submitted* complete monitoring plan shall meet all of the provisions of Part 2, Section II of the *OTC* document "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions".

2. The *authorized account representative* or alternate *authorized account representative* shall obtain certification of the NO_x emissions monitoring system in accordance with the requirements of the *OTC* documents "Guidance for the Implementation of the Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

i. The certification testing shall be successfully completed no later than April 30, 1999.

ii. A certification test notice and protocol shall be *submitted* to the Department prior to the anticipated performance of the certification testing, but no later than the effective date of this regulation.

iii. A certification report meeting the requirements of the *OTC* document "NO_x Budget Program Monitoring Certification and Reporting Instructions" shall be *submitted* to the Department no later than 45 days following the performance of the certification testing.

3. The *owner or operator* of a *non-Part 75 budget source* shall monitor NO_x emissions in accordance with one of the following requirements:

i. Any *non-Part 75 budget source* that has a maximum rated *heat input* capacity of 250 MMBTU/hr or greater which is not a peaking unit as defined in 40 CFR 72.2, or whose operating permit allows for the combustion of any solid fossil fuel, or is required to install a NO_x *CEMS* for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement, shall install, certify, and operate a NO_x *CEMS*. Any *budget source* that has previously installed a NO_x *CEMS* for the purposes of meeting either the requirements of 40 CFR Part 60 or any other Department or Federal requirement shall certify and operate the NO_x *CEMS*.

A. The NO_x *CEMS* shall be used to measure stack gas NO_x concentration and the NO_x emissions rate in lb/MMBTU calculated in accordance with the procedures in 40 CFR Part 75, Appendix F.

B. Any *non-Part 75 budget source* utilizing a NO_x *CEMS* shall meet the following requirements from the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program":

1. Initial certification requirements identified in Part 2, Section III.

2. Quality assurance requirements identified in Part 2, Section IV.

3. Re-certification requirements identified in Part 2, Section V.

ii. The *owner or operator* of a *non-Part 75 budget source* not required to install a NO_x *CEMS* in accordance with Section 13(f)(3)(i) of this regulation may elect to install a NO_x *CEMS* meeting the requirements of 40 CFR Part 75 or Section 13(f)(3)(i) of this regulation.

iii. The *owner or operator* of a *non-Part 75 budget source* that is not required to have a NO_x *CEMS* may request approval from the Department to use any of the following methodologies to determine the NO_x emission rate:

A. The *owner or operator* of a *non-Part 75 budget source* may request the use of an alternative monitoring methodology meeting the requirements of 40 CFR Part 75, Subpart E. The Department must approve the use of an *alternative monitoring system* before such system is operated to meet the requirements of the NO_x Budget Program. If the methodology must be incorporated into a permit pursuant to Regulation 30 of Delaware's "**Regulations Governing the Control of Air Pollution**", the methodology must also be approved by the EPA.

B. The *owner or operator* of a *boiler* or combustion turbine *non-Part 75 budget source* may request the use of the procedures contained in 40 CFR Part 75, Appendix E, to measure the NO_x emission rate, in lb/MMBTU, consistent with the requirements identified in Part 2 of the *OTC* document "Guidance for the

Implementation of Emission Monitoring Requirements for the NO_x Budget Program.

C. The *owner or operator* of a combustion turbine *non-Part 75 budget source* may request the use of default emission factors to determine NO_x emissions, in pounds per MMBTU, as follows:

1. For oil-fired combustion turbines, the generic default emission factor is 1.2 pounds of NO_x per MMBTU.

2. For gas-fired combustion turbines, the generic default emission factor is 0.7 pound of NO_x per MMBTU.

3. The *owner or operator* of oil-fired and gas-fired combustion turbines may perform testing, in accordance with Department approved methods, to determine unit specific maximum potential NO_x emission rates in accordance with the requirements of Part 2 of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

D. The *owner or operator* of a *boiler non-Part 75 budget source* may request the use of default emission factors to determine NO_x emissions, in pound per MMBTU, as follows:

1. For oil-fired *boilers*, the generic default emission factor is 2.0 pounds of NO_x per MMBTU.

2. For gas-fired *boilers*, the generic default emission factor is 1.5 pound of NO_x per MMBTU.

3. The *owner or operator* of oil-fired and gas-fired *boilers* may perform testing, in accordance with Department approved methods, to determine unit specific maximum potential NO_x emission rates in accordance with the requirements of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program.

4. The *owner or operator* of a *non-Part 75 budget source* may determine *heat input* in accordance with the following guidelines:

i. The *owner or operator* of a *non-Part 75 budget source* using a NO_x *CEMS* to measure NO_x emission rate may elect to measure stack flow and diluent (O_2 or CO_2) concentration and use the procedures of 40 CFR Part 75, Appendix F, to determine the hourly *heat input*. For flow monitoring systems, the *non-Part 75 budget source* must meet all applicable requirements of 40 CFR Part 75.

ii. The *owner or operator* of a *non-Part 75 budget source* combusting only oil and/or natural gas may determine hourly *heat input* rate by monitoring fuel flow and conducting fuel sampling.

A. The *owner or operator* of a *non-Part 75 budget source* may monitor fuel flow by using fuel flow meter systems certified under 40 CFR Part 75, Appendix D, or as defined in Part 2, Section III of the *OTC* document "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

B. The *owner or operator* of a *non-Part 75 budget source* combusting oil may perform oil sampling and testing in accordance with the requirements of 40 CFR Part 75 or Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

C. The *owner or operator* of a *non-Part 75 budget source* combusting gas must determine the heating value of the gas in accordance with the requirements of 40 CFR Part 75 or the methodologies approved in Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

iii. The *owner or operator* of a *non-Part 75 budget source* electrical generating unit less than 25 megawatts rated capacity that combusts only oil or gas may petition the Department to determine *heat input* by measuring fuel used on a frequency of greater than one hour but no less than weekly.

A. The fuel usage must be reported on an hourly basis by apportioning the fuel based on electrical load in accordance with the following formula:

$$\text{Hourly fuel usage} = \frac{\text{Hourly electrical load}}{\text{Total electrical load}} \times \text{total fuel usage}$$

B. The *owner or operator* of a *non-Part 75 budget source* combusting oil may perform oil sampling and testing in accordance with the requirements of 40 CFR Part 75 or Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

C. The *owner or operator* of a *non-Part 75 budget source* combusting gas must determine the heating value of the gas in accordance with the requirements of 40 CFR Part 75 or the methodologies approved in Part 2, Section I(C)(2) of the *OTC* document "Guidance for the Implementation of Emissions Monitoring Requirements for the NO_x Budget Program".

iv. The *owner or operator* of a *non-Part 75 budget source* that combusts only oil and/or gas and has elected to use a unit-specific or generic default NO_x emission rate, may petition the Department to determine hourly *heat input* based on fuel use measurements for a specified period that is longer than one hour.

A. The petition must include a description of the periodic measurement methodology, including an assessment of its accuracy.

B. Each time period must begin on or after May 1 and conclude on or before September 30 of each calendar year.

C. To determine hourly input, the *owner or operator* shall apportion the long term fuel measurements to operating hours during the *control period*.

D. Fuel sampling and analysis must conform to the requirements of Part 2, Section I(C)(2) of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

v. The *owner or operator* of a *non-Part 75 budget source* that combusts any fuel other than oil or natural gas may petition the Department to use an alternative method of determining *heat input*, including:

A. Conducting fuel sampling and analysis and monitoring fuel usage.

B. Using *boiler* efficiency curves and other monitored information such as *boiler* steam output.

C. Any other method approved by the Department and which meets the requirements identified in Part 2, Section I, of the *OTC* document "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program".

vi. The *owner or operator* of a *non-Part 75 budget source* may petition the Department to use a unit-specific maximum hourly *heat input* based on the higher of the manufacturer's rated capacity or the highest observed hourly *heat input* in the period beginning five years prior to the program participation date. The Department may approve a lower maximum *heat input* if an *owner or operator* demonstrates that the highest observed hourly *heat input* in the last five years is not representative of the unit's current capabilities because modifications have been made limiting its capacity permanently.

vii. Methods used for determination of *heat input* are subject to both applicable initial and periodic relative accuracy and quality assurance testing requirements in accordance with the following provisions of the *OTC* document "Guidance for Implementation of Emissions Monitoring Requirements for the NO_x Budget Program":

A. Initial certification requirements identified in Part 2, Section III.

B. Quality assurance requirements identified in Part 2, Section IV.

C. Re-certification requirements identified in Part 2, Section V.

5. Once the NO_x emission rate in pounds per million BTU has been determined in accordance with Section 13(f)(3) of this regulation and the *heat input* rate in MMBTU per hour has been determined in accordance with Section 13(f)(4) of this regulation, the two values shall be multiplied together to result in NO_x emissions in pounds per hour and reported to the *NETS* in accordance with Section 15 of this regulation.

6. The relevant procedures of the *OTC* document "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" shall be employed for unusual or complicated stack configurations.

4/1/99
Section 14 - Recordkeeping

The *owner or operator* of any *budget source* shall maintain, for a period of at least five years, copies of all measurements, tests, reports, data, and other information required by this regulation.

4/1/99
Section 15 - Emissions Reporting

a. The *Authorized account representative* or alternate *authorized account representative* for each *budget source* shall submit to the *NETS Administrator*, electronically in a format which meets the requirements of the EPA's Electronic Data Reporting (EDR) convention, emissions and operating information in accordance with the *OTC* documents "Guidance for the Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and "NO_x Budget Program Monitoring Certification and Reporting Instructions".

1. All *existing Part 75 budget sources* not required to install additional monitoring equipment shall meet the reporting requirements of the NO_x Budget Program as follows:

i. By meeting all current Part 75 reporting requirements and reporting the additional unit identification information as required by the NO_x Budget Program (100 and 500 level records) beginning no later than with the submittal of the quarterly report for the second calendar quarter of 1999.

ii. Reserved

iii. Beginning with the quarterly report for the second quarter of 1999, report all Part 75 required information and all additional information required by the NO_x Budget Program including:

A. Additional unit identification information.

B. Hourly NO_x mass emissions in pounds per hour based on reported hourly *heat input* and hourly NO_x emission rate.

C. Cumulative NO_x *control period* NO_x mass emissions in tons per NO_x *control period*.

D. Additional monitoring plan information related to the NO_x Budget Program.

E. Certification status information as required by the NO_x Budget Program.

2. Beginning no later than with the quarterly report for the second quarter of 1999 all *Part 75 budget sources*, that are required to install and certify new monitoring systems to meet the requirements of the NO_x Budget Program, shall meet the reporting requirements of the NO_x Budget Program by meeting all current Part 75 reporting requirements and the additional reporting requirements of the NO_x Budget Program including *submittal* of the following information:

   i. Additional unit identification information.

   ii. Hourly NO_x mass emissions in pounds per hour based on reported hourly *heat input* and hourly NO_x emission rate.

   iii. Cumulative NO_x *control period* NO_x mass emissions in tons per NO_x *control period*.

   iv. Additional monitoring plan information related to the NO_x Budget Program.

   v. Certification status information as required by the NO_x Budget Program.

3. All *non-Part 75 budget sources* shall meet the reporting requirements of the NO_x Budget Program by reporting all information required by the NO_x Budget Program as well as reporting hourly and cumulative NO_x mass emissions beginning no later than with the quarterly report for the second quarter of 1999.

b. The *authorized account representative* or alternate *authorized account representative* of a *budget source* subject to 40 CFR Part 75 shall submit NO_x Budget Program quarterly data to the U.S. EPA as part of the quarterly reports *submitted* for the compliance with 40 CFR Part 75.

c. The *authorized account representative* or alternate *authorized account representative* of a *budget source* not subject to 40 CFR Part 75 shall submit NO_x budget program quarterly data to the U.S. EPA as follows:

1. For *non-Part 75 budget sources* not utilizing NO_x *CEMS*, submit two quarterly reports each year, one for the second quarter and one for the third quarter.

2. For *non-Part 75 budget sources* using any NO_x *CEMS* based measurement methodology, submit a complete quarterly report for each quarter in the year.

3. The submission deadline is thirty days after the end of the calendar quarter. If the thirtieth day falls on a weekend or federal holiday, the reporting deadline is midnight of the first day following the holiday or weekend.

d. Should a *budget source* be permanently shutdown, the *authorized account representative* or alternate *authorized account representative* may submit a written request the Department for an exemption from the requirements of Sections 13 and 14 of this regulation. The shutdown exemption request shall identify the *budget source* being shutdown and the date of

permanent shutdown. Within 30 days of receipt of the shutdown exemption request, the Department shall:

1. If the Department does not approve the shutdown exemption request, the *authorized account representative* shall be notified in writing, including the reason(s) for not approving the request.

2. If the Department approves the shutdown exemption request:

   i. The *authorized account representative* shall be notified in writing.

   ii. The Department shall notify the *NETS Administrator* of the approved shutdown request.

4/1/99
Section 16 - End-of Season Reconciliation

a. *Allowances* may be used for compliance with this program in a designated compliance year by being in a *compliance account* as of December 31 of the subject year, or by being identified in an *allowance transfer* request that is *submitted* by December 31 of the subject year.

b. Each year during the period November 1 through December 31, inclusive, the *authorized account representative* or alternate *authorized account representative* shall request the *NATS Administrator* to deduct *current year allowances* from the *compliance account* equivalent to the NO_x emissions from the *budget source* in the most recent *control period*. This request shall be *submitted* by the *authorized account representative* or alternate *authorized account representative* to the *NATS Administrator* by not later than December 31. This request shall identify the *compliance account* of the *budget source* and the serial number of each of the *allowances* to be deducted.

   1. *Allowances* allocated for the current NO_x *control period* may be used without restriction.

   2. *Allowances* allocated for future NO_x *control periods* may not be used.

   3. *Allowances* which were allocated for any preceding NO_x *control period* which were banked may be used in the current *control period. Banked allowance* shall be deducted against NO_x emissions in accordance with the ratio of NO_x *allowances* to emissions as specified in Section 12 of this regulation.

c. If the emissions from a *budget source* in the current *control period* exceed the *allowances* held in that *budget source's compliance account* for that *control period*:

   1. The *budget source* shall obtain additional *allowances* by December 31 of the subject year so that the total number of *allowances* in the *compliance account* meeting the criteria of Section 16(b)(1) through (3) of this regulation, including *allowances* identified in any *allowance transfer* request properly *submitted* to the *NATS Administrator* by December 31 of the subject year, equals or exceeds the *control period* emissions of NO_x rounded to the nearest whole ton.

   2. If there is an insufficient number of NO_x *allowances* available for NO_x *allowance deduction*, the source is out of compliance with this

regulation and subject to enforcement action and penalties pursuant to Section 18 of this regulation.

d. If by the December 31 compliance deadline the *authorized account representative* or alternate *authorized account representative* either makes no NO_x *allowance deduction* request, or a NO_x *allowance deduction* request insufficient to meet the *allowances* required by the actual emissions, a violation of this regulation may have occurred and the *NATS Administrator* may deduct the necessary number of NO_x *allowances* from the *budget source's compliance account*. The *NATS Administrator* shall provide written notice to the *authorized account representative* that NO_x *allowances* were deducted from the source's *account*.

e. The *authorized account representative* or alternate *authorized account representative* may notify the *NATS Administrator* of any claim that the *NATS Administrator* made an error in recording transfer information that was *submitted* in accordance with Section 11 of this regulation, provided that such claim of error notification is *submitted* to the *NATS Administrator* by no later than 15 business days following the date of the notification by the *NATS Administrator* pursuant to actions taken in accordance with Section 16(d) of this regulation.

1. Such claim of error notification shall be in writing and shall include:

i. A description of the error alleged to have been made by the *NATS Administrator*.

ii. A proposed correction of the alleged error.

iii. Any supporting documentation or other information concerning the alleged error and proposed corrective action.

iv. The following statement: *"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."*

v. Signature of the *authorized account representative* or alternate *authorized account representative* and date of signature.

2. The *NATS Administrator*, at the *NATS Administrator's* sole discretion based on the documentation provided, shall determine what changes, if any, shall be made to the *account*(s) subject to the alleged error. Not later than 20 business days after receipt of a claim of error notification, the *NATS Administrator* shall submit to the *authorized account representative* and to the Department a written response stating the determination made, any action taken by the *NATS Administrator*, and the reason(s) for the determination and actions.

3. The *NATS Administrator* may, without prior notice of a claim of error and at the *NATS Administrator*'s sole discretion, correct any

errors in any account on the *NATS Administrator*'s own motion. The *NATS Administrator* shall notify the *authorized account representative* and the Department no later than 20 business days following any such corrections.

12/11/99
Section 17 - Compliance Certification

a. For each NO_x *allowance control period*, the *authorized account representative* or alternate *authorized account representative* of each *budget source* shall submit to the Department an annual compliance certification.

b. The compliance certification shall be *submitted* no later than December 31 of each year.

c. The compliance certification shall contain, at a minimum, the following information:

1. Identification of the *budget source*, including the *budget source's* name and address, the name of the *authorized account representative* and alternate *authorized account representative*, if any, and the *NATS account number*.

2. A statement indicating whether or not emissions data was *submitted* to the *NETS Administrator* pursuant to Section 15 of this regulation.

3. A statement indicating whether or not the *budget source* held sufficient NO_x *allowances*, as determined in Section 16 of this regulation, in its *compliance account* for the NO_x *allowance control period* as of December 31 of the subject year, or by being identified in an *allowance transfer* request that was *submitted* by December 31 of the subject year, to equal or exceed the *budget source's* actual emissions as reported to the *NETS Administrator* for the *control period*.

i. If the *budget source's compliance account* held sufficient *allowances*, no additional documentation is required to be submitted under Section 17(c)(3) of this regulation.

ii. If the *budget source's compliance account* held insufficient *allowances*, the *authorized account representative* or alternate *authorized account representative* may include all of the following information as part of the compliance certification for consideration by the Department under Section 18(b) and Section 18(c) of this regulation:

A. A calculation showing the overall percentage that the *control period* NOx emissions from the non-compliant *budget source* plus all other *budget sources* under control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware, exceeded their *allowance* holdings:

Overall Percentage = ((Total NOx Emissions/Total *Allowance* Holdings)–1) * 100

Where:

Total NOx Emissions = The subject year's *control period* NOx emissions from the non-compliant *budget source* plus all other *budget sources* under the control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware.

Total *Allowance* Holdings = As of December 31 of the subject year, the total number of *allowances* held in the compliance accounts of the non-compliant *budget source* plus all other *budget sources* under the control of a common company, as identified in Appendix "A" of this regulation, and within the State of Delaware. The total *allowance* holdings shall also include *allowance*s identified in any *allowance transfer* request properly *submitted* to the *NATS Administrator*, in accordance with the requirements of Section 11 of this regulation, by December 31 of the subject year.

B. A copy of a reasonably specific plan for the balancing of the *budget source's compliance account* by December 31 of the subject year that 1) was prepared at the start of the *control period,* and 2) included contingencies for reasonably anticipated events which might compromise the *budget source's* ability to balance its *compliance account* (e.g., especially hot weather, operational glitches at the *budget source*, etc);

C. Documentation showing that investments in equipment, *allowance* purchase, and/or other items were made consistent with the *budget source's* plan under Section 17(c)(3)(ii)(B) of this regulation;

D. Documentation showing that the *budget source's* plan under Section 17(c)(3)(ii)(B) of this regulation was periodically reevaluated, and continuing reasonable efforts were made to ensure operations and/or *allowance* purchases would allow the *budget source* to balance the *budget source's compliance account* by December 31 of the subject year;

E. Documentation indicating that communications with brokers about the availability of *allowances* for purchase occurred consistent with the *budget source*'s plan under Sections 17(c)(3)(ii)(B) and (D) of this regulation and, if applicable, rationale indicating why any available *allowances* were not purchased);

F. Certification that, except for the final balancing of a *compliance account*, all program requirements (e.g., applications, submittals, monitoring, etc.) were substantially satisfied. For the purposes of making the determination under Section 18(b) of this regulation only, instances where a requirement was not satisfied due to the Department's and/or the United States Environmental Protection Agency's failure to provide a necessary approval in a timely fashion shall be considered by the Department in determining whether the *budget source* substantially satisfied that particular requirement, provided documentation of such failure is included with the certification, and;

G. Documentation of any other factors that the *authorized account representative* or alternate *authorized account representative* considers relevant.

4. A statement of certification whether the monitoring plan which governs the *budget source* was maintained to reflect actual operation and monitoring of the *budget source* and contains all information necessary to attribute monitored emissions to the *budget source*.

5. A statement of certification that all emissions from the *budget source* were accounted for, either through the applicable monitoring or through application of the appropriate missing data procedures.

6. A statement whether the facts that form the basis for certification of each monitor or monitoring method approved in accordance with Section 13 of this regulation have changed.

7. If a change is required to be reported in accordance with Section 17(c)(6) of this regulation, specify the nature of the change, when the change occurred, and how the *budget source's* compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor re-certification.

8. The following statement in verbatim, "*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 fines or imprisonment.*"

9. Signature of the *budget source's authorized account representative* or alternate *authorized account representative* and the date of signature.

d. The Department may verify compliance by whatever means necessary, including but not limited to:

1. Inspection of facility operating records.

2. Obtaining information on *allowance deduction* and transfers from the *NATS Administrator*.

3. Obtaining information on emissions from the *NETS Administrator*.

4. Testing emission monitoring devices.

5. Requiring the *budget source* to conduct emissions testing using testing methods approved by the Department.

a. If the emissions from a *budget source* exceed *allowances* held in the *budget source's compliance account* for the *control period* as of December 31 of the subject year, the *NATS Administrator* shall deduct *allowances* from the *budget source's compliance account* for the next *control period* at a rate of three (3) *allowances* for every one (1) ton of *excess emissions*.

1. The *NATS Administrator* shall provide written notice to the Department and the *budget source's authorized account representative* that NO_x *allowances* were deducted from the *budget source's* account.

2. The *authorized account representative* or alternate *authorized account representative* may notify the *NATS Administrator* (with copy to the Department) of any claim that the *NATS Administrator* made an error in recording *submitted* transfer information in accordance with Section 16(e) of this regulation.

3. If the NOx emissions from a *budget source* exceed *allowances* held in the *budget source's compliance account* for the year 2002 *control period* as of December 31, 2002, *allowances* will be deducted from the 2003 *control period* in accordance with the requirements of follow-on regulation that addresses *allowance allocation*s for the year 2003 *control period*.

b. If the result of the calculation submitted pursuant to Section 17(c)(3)(ii)(A) of this regulation is equal to or less than 5%, and if the Department determines that the *budget source* has made all reasonable efforts to comply with the requirements of this regulation based on the information submitted pursuant to Section 17(c)(3)(ii) of this regulation, considered collectively, then:

1. For shortfalls that occurred for the 1999 *control period*, the Department shall;

i. Within 30 days of receipt of the notification under Section 18(a)(1) of this regulation;

A. Calculate a penalty correction *allocation*. Such *allocation* shall be calculated by multiplying the value of the 3-to-1 penalty that was applied to the 1999 *control period* shortfall under Section 18(a) of this regulation by two-thirds. This quantity may be adjusted by the Department at any time to account for any revision occurring under Section 18(a)(2) of this regulation.

B. Notify the *OTC* and authorize the *NATS Administrator* to transfer the quantity of *allowances* equal to the penalty correction *allocation* calculated under Section 18(b)(1)(i)(A) of this regulation into Delaware's primary reserve *NATS account*.

ii. Within 30 days of determining that the *NATS Administrator* has added the subject *allowances* into Delaware's primary reserve *NATS account*, submit a transfer request to the *NATS Administrator* transferring the penalty correction *allocation* to the appropriate *budget source's compliance account*.

2. For shortfalls that occurred for the 2000 *control period*, the Department shall;

i. Within 30 days of receipt of the notification under Section 18(a)(1) of this regulation;

A. Calculate a penalty correction *allocation*. Such *allocation* shall be calculated by multiplying the value of the 3-to-1 penalty that was applied to the 2000 *control period* shortfall under Section 18(a) of this regulation by one-third. This quantity may be adjusted by the Department at any time to account for any revision occurring under Section 18(a)(2) of this regulation.

B. Notify the *OTC* and authorize the *NATS Administrator* to transfer the quantity of *allowances* equal to the penalty correction allocation calculated under Section 18(b)(2)(i)(A) of this regulation into Delaware's primary reserve *NATS account*.

ii. Within 30 days of determining that the *NATS Administrator* has added the subject *allowances* into Delaware's primary reserve *NATS account*, submit a transfer request to the *NATS Administrator* transferring the penalty correction *allocation* to the appropriate *budget source's compliance account*.

3. For shortfalls that occurred subsequent to calendar year 2000 *control period*, the 3-to-1 penalty is in effect for all circumstances and the Department shall not process any penalty corrections under Section 18(b) of this regulation.

c. In addition to NO_x *allowance deduction* penalties under Section 18(a) of this regulation, the Department may enforce the provisions of this regulation under 7 Del. C. Chapter 60. In the determination of the number of days of violation for the purposes of calculating the maximum penalty under the provisions of 7 Del. C. Chapter 60, any *excess emissions* for the *control period* shall constitute daily violations for the *control period*, 153 violations. The Department will consider collectively the criteria set forth in Section 17(c)(3)(ii) of this regulation in determining the magnitude of the penalty assessed.

4/1/99
Section 19 - Program Audit

a. The Department shall conduct an audit of the NO_x Budget Program prior to May 1, 2002, and at a minimum every three years thereafter. The audit shall include the following:

1. Confirmation of emissions reporting accuracy through validation of NO_x *allowance* monitoring and data acquisition systems at the *budget source*.

2. Examination of the extent to which *banked allowances* have, or have not, contributed to emissions in excess of the *budget* for each *control period* covered by the audit.

3. An analysis of the geographic distribution of emissions as well as hourly and daily emission totals in the context of ozone control.

4. An assessment of whether the program is providing the level of emissions reductions anticipated and include in the SIP.

b. The Department shall prepare a report on the results of the audit. The Department shall seek public input on the conclusions contained in the audit report and provide for a public notice, public comment period, and allow for the request to hold a public hearing on the conclusions contained in the report.

c. In addition to the Department audit, the Department may seek a third party audit of the program. Such an audit could be implemented by the Department or could be performed on a region-wide basis under the supervision of the *OTC*.

d. Should an audit result in recommendations for program revisions at the state level, the Department shall consider the audit recommendations, in consultation with the *OTC*, and if found necessary, propose the appropriate program revisions as changes to current procedures or modifications to this regulation.

4/1/99
Section 20 - Program Fees

The *authorized account representative* or alternate *authorized account representative* of each *compliance account* and each *general account* shall pay fees to the Department consistent with the fee schedule established from time to time by the Delaware General Assembly, should a fee schedule be established.

NO_x BUDGET PROGRAM --- APPENDIX "A"

COMPANY	FACILITY and PLANT POINT	OTC IDENTIFIED ALLOWANCES	EXCEPTIONAL CIRCUMSTANCES ALLOWANCES	RESERVE ALLOWANCES	FINAL ALLOWANCES	SOURCE TYPE
DELMARVA POWER	Christiana Sub 001	6	-0-	1	7	Non-Part 75
	Christiana Sub 002	6	-0-	1	7	Non-Part 75
	Delaware City 002	1	-0-	1	2	Non-Part 75
	Edge Moor 001	1	-0-	1	2	Non-Part 75
	Edge Moor 002	241	-0-	1	242	Part 75
	Edge Moor 003	345	-0-	1	346	Part 75
	Edge Moor 004	621	28	1	650	Part 75
	Hay Road 001	49	-0-	1	50	Non-Part 75
	Hay Road 002	34	-0-	1	35	Non-Part 75
	Hay Road 3*	-0-	-0-	-0-	-0-	Part 75
	Indian River 001	340	-0-	1	341	Part 75
	Indian River 002	397	-0-	1	398	Part 75
	Indian River 003	834***	-0-	1	835	Part 75
	Indian River 004	1,652	-0-	2	1,654	Part 75
	Indian River 10**	-0-	-0-	1	2	Non-Part 75
	Madison Str. 001	-0-	-0-	1	1	Non-Part 75
	West Sub 001	2	-0-	1	3	Non-Part 75
DFD Operating Services	McKee Run 001	72***	-0-	1	73	Non-Part 75
	McKee Run 002	44***	-0-	1	45	Non-Part 75
	McKee Run 003	184	-0-	2	186	Part 75
	VanSant 1*	-0-	-0-	-0-	-0-	Part 75
FIRST STATE	Co-Gen 1**	-0-	-0-	2	203	Non-Part 75
MOTIVA ENTERPRISES	Delaware City 006****	-0-	-0-	1	105	Non-Part 75
	Delaware City 019	20	-0-	1	21	Non-Part 75
	Delaware City 034	70	-0-	1	71	Non-Part 75
	Delaware City 067	93	-0-	1	94	Non-Part 75
	Delaware City 068	206	-0-	1	207	Non-Part 75
	Delaware City 069	227	-0-	1	228	Non-Part 75
	Delaware City 070	214	-0-	2	216	Non-Part 75
	Delaware City 072	-0-	-0-	-0-	-0-	Non-Part 75
	Delaware City 074	117	-0-	1	118	Non-Part 75
	Delaware City 105	-0-	-0-	-0-	-0-	Non-Part 75
TOTAL		5,776	28	32	6,142	

NOTES: (*) These Units did not start operation until after 1990.
(**) Units operated in the 1990 NO_x control period but were not included in the "**1990 OTC Baseline Emissions Inventory**".
(***) OTC MOU allowances corrected from "**1990 OTC Baseline Emissions Inventory**" due to use of incorrect RACT factor
(****) OTC MOU allowances corrected from "**1990 OTC Baseline Emissions Inventory**" due to incorrect reporting of 1990 fuel use information.

NOx BUDGET PROGRAM --- APPENDIX "B"					
COMPANY	FACILITY or PLANT POINT	1990 BASELINE HEAT INPUT (10^6 BTU)	1990 BASELINE NO_x EMISSIONS (Tons)	1990 BASELINE EMISSION RATE (lb/mmBTU)	*RACT* NO_x EMISSIONS (Tons)
DELMARVA POWER	Christiana Sub 001	16,245	5.8	0.709	5.8
	Christiana Sub 002	15,447	5.5	0.709	5.5
	Delaware City 002	1,612	0.6	0.703	0.6
	Edge Moor 001	1,835	0.7	0.708	0.7
	Edge Moor 002	2,409,836	655.8	0.545	648.1
	Edge Moor 003	3,451,182	928.7	0.540	516.0
	Edge Moor 004	6,213,944	1,436.8	0.463	1,147.3
	Hay Road 001	938,341	49.0	0.105	49.0
	Hay Road 002	631,111	33.6	0.106	33.6
	Hay Road 3*	-0-	-0-	-0-	-0-
	Indian River 001	1,816,612	755.6	0.828	755.6
	Indian River 002	2,134,257	882.3	0.828	882.3
	Indian River 003	4,521,301	1,853.7	0.819	762.1
	Indian River 004	8,747,546	3,671.6	0.838	1,830.8
	Indian River 10**	-0-	-0-	-0-	-0-
	Madison Street 001	1,079	0.4	0.706	0.4
	West Sub 001	6,105	2.2	0.709	2.2
DFD	McKee Run 001	344,472	91.6	0.524	55.0
	McKee Run 002	211,742	56.3	0.505	33.8
	McKee Run 003	1,724,601	411.7	0.447	321.8
	VanSant 1*	-0-	-0-	-0-	-0-
FIRST STATE	Co-Gen 1**	-0-	-0-	-0-	-0-
	Delaware City 006**	-0-	-0-	-0-	-0-
MOTIVA ENTERPRISES	Delaware City 019	318,601	20.1	0.126	20.1
	Delaware City 034	1,100,470	69.5	0.126	69.5
	Delaware City 067	931,712	229.0	0.486	116.5
	Delaware City 068	1,820,133	588.5	0.647	345.8
	Delaware City 069	2,002,309	647.4	0.647	440.5
	Delaware City 070	1,888,905	610.7	0.647	368.3
	Delaware City 072	-0-	-0-	-0-	-0-
	Delaware City 074	1,847,552	116.7	0.126	116.7
	Delaware City 105	-0-	-0-	-0-	-0-

NOTES: Data as identified in ***"1990 OTC NO_x Baseline Emission Inventory"***, Final OTC NO_x Baseline Inventory, Point Segment Level Data.

(*) These Units did not start operation until after 1990.

(**) *Indian River Point 10, First State CoGen 1*, and *Delaware City 006* were not included in the Reference Document, but were operating in the 1990 NO_x control period.