ENVIRONMENTAL PROTECTION
POLICY AND PLANNING/AIR QUALITY MANAGEMENT

NO_x Budget Program

Proposed Amendments:	N.J.A.C. 7:27-31.1 through 31.4, 31.7, 31.9 through 31.14, 31.16 through 31.18; N.J.A.C. 7:27A-3.10
Proposed New Rules:	N.J.A.C. 7:27-31.22
Authorized by:	Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection
Authority:	N.J.S.A. 13:1B-3 and 26:2C-1 et seq.
DEP Docket Number:	15-99-07/701
Proposal Number:	PRN

A public hearing concerning this proposal will be held on:

Wednesday September 1, 1999 at 10:00 a.m.
New Jersey Department of Environmental Protection
401 East State Street
Hearing Room - First Floor, East Wing
Trenton, New Jersey

Submit written comments by Friday September 3, 1999 to:

Michael Marotta, Esq.
Attn: Docket # 15-99-07/701
Department of Environmental Protection
Office of Legal Affairs
P.O. Box 401
Trenton, New Jersey 08625-0401

Written comments may also be submitted at the public hearing. As a courtesy to the Department, it is requested (but not required) than anyone submitting a written comments also include a diskette containing an electronic version of the written comments with the submission. Also, as a courtesy to the stenographer, it is requested (but not required) that anyone submitting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

Interested persons may obtain a copy of the proposed amendments through the following methods:

1. Copies of this adoption document can be downloaded electronically from the Department's Electronic Bulletin Board System (BBS) or from the World Wide Web. The file is available in WordPerfect® 6.1 format and Adobe® Acrobat® Portable Document Format. The data line number for the Bulletin Board is (609) 292-2006 (Data bit: 8; Parity: N; Stop bit: 1). On the BBS, the compressed file, NOXBRVPR.ZIP, is located in file area #35 (Air: Props, Adopts, & Notices). On the World Wide Web, this document can be accessed at <http://www.state.nj.us/dep/aqm/noxbugetrevpr.htm>.

2. The proposed amendments may be requested form the Department by e-mailing diem@dep.state.nj.us or by telephoning (609) 777-1345.

The proposed amendments will become operative 60 days after their adoption (see N.J.S.A. 26:2C-8).

SUMMARY

The Department hereby proposes amendments at N.J.A.C. 7:27-31 entitled "NO_x Budget Program." This rule (current rule) prescribes participation of New Jersey's large combustion sources in a regional cap and trade program designed to significantly reduce emissions of oxides of nitrogen (NO_x). This regional reduction of NOx emissions from the NOx Budget Program generally is expected to greatly reduce ambient ozone concentrations in New Jersey, the Ozone Transport Region, and in other areas affected by the transport of ozone precursors.

I. Background

A. The NOx Budget Program rules were adopted and published in the New Jersey Register on July 20, 1998 at 23 N.J.R. 2660(a).

1. Ozone Transport Commission Memorandum of Understanding

The Federal Clean Air Act (Act), 42 U.S.C. §§7401 et seq., as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549, November 15, 1990) prescribed the establishment of the Ozone Transport Commission (OTC) which consists of representatives from of 12 northeastern states and the District of Columbia. On September 27, 1994, a Memorandum of Understanding (MOU) Among the States of the OTC on the Development of a Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions was signed by representatives of the following member jurisdictions of the Ozone Transport Commission: Connecticut, Delaware, the District of Columbia, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania Rhode Island, and Vermont. Commissioner Robert C. Shinn signed the agreement for New Jersey. The MOU was subsequently signed also by a representative of Massachusetts in February, 1996. The MOU included a commitment by each jurisdiction to establish regulations for the control of emissions of oxides of nitrogen (NO_x) from boilers and other indirect heat exchangers having a maximum gross heat input rate of at least 250 million British Thermal Units per hour. It established the principles upon which

a regionwide NO_x emissions budget was to be developed, which would provide an overall limit or "cap" on emissions from sources subject to the program. It also included an agreement to develop a regionwide trading mechanism in order to provide a more flexible and cost-effective means to comply with the program.

2. OTC Model Rule

A task force was established by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA) to create a model rule for the participating jurisdictions to use as common basis for the rules each would promulgate to establish the NO_x Budget Program within its jurisdiction. The participating jurisdictions agreed that a common foundation for most aspects of the program, not including the method for allocating allowances within a jurisdiction, would be necessary if regionally consistent implementation of the NO_x Budget Program was to be achieved. All OTC jurisdictions, as well as representatives of the United States Environmental Protection Agency (USEPA), participated in the task force. An advisory group comprised of stakeholder representatives met periodically with the task force. Further input was obtained at public meetings open to all interested persons. The task force issued a final model rule (dated May 1, 1996).

The regional NO_x Budget Program, envisioned in the model rule, requires that all budget sources in the OTR, collectively, to reduce their emissions of NO_x such that the total emissions from all budget sources in the OTR during the summer ozone season does not exceed the finite amount of emissions. This requirement commences for the 1999 ozone season and applies to each ozone season thereafter. This emissions budget is characterized by the allocation of a limited number of allowances. Each allowance is an authorization to emit one ton of NOx during the control period. The model rule included a trading mechanism, modeled in large part on the allowance trading mechanism included in USEPA's Acid Rain Program. The model rule has been used as a basis for the current rules.

3. Guidance Documents

To continue the effort to achieve regionally consistent implementation of the NO_x Budget Program, a budget implementation workgroup was established as a cooperative effort between the OTC, member jurisdictions, and USEPA's Acid Rain Division. Under the auspices of this workgroup, implementation guidance documents have being developed. On several occasions the workgroup held open public meetings, in order to create the opportunity for public participation in the development of the guidance documents.

On January 28, 1997, the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" was officially issued. On July 3, 1997, the "Electronic Data Reporting: Acid Rain Program/NOx Budget Program -- Version 2.0" and the "NO_x Budget Program Monitoring Certification and Reporting Instructions"were officially issued. These guidance documents, and any subsequent revisions thereto, are incorporated by reference in the current rule. Copies of these guidance documents may be downloaded from USEPA's Acid Rain Program page on the World Wide Web at <http://www.epa.gov/acidrain/otc/otcmain.html> and may also be requested by contacting the Department's Air Quality Rule Development Section at (609)777-1345.

4. SIP Obligation

Pursuant to the Federal Clean Air Act, the USEPA has established a National Ambient Air Quality Standard (NAAQS) for ozone (120 parts per billion, primary standard). See at 42 U.S.C. §7409(a)(1). The Act required any state in which the ambient air quality failed to achieve the NAAQS to submit a State Implementation Plan (SIP) to USEPA. 42 U.S.C. §§7410. The SIP provides for the State of New Jersey to establish enforceable emission limitations and other control measures that would enable the State to achieve the standard.

New Jersey is subject to this requirement because it has not attained the NAAQS for ozone. USEPA has designated 18 of the State's 21 counties as being in "severe" non-attainment, based on ozone levels in those areas more than 50 percent above the NAAQS. In the SIP revision submitted to the USEPA on December 31, 1996, New Jersey made a legally-binding commitment to promulgate the NO_x Budget Program. This proposal is a continuation of the steps taken by the Department toward the fulfillment of that commitment.

Recently the USEPA has determined (see 62 FR 60318, 63 FR 25902, and 63 FR 57356) that NO_x emissions from sources and emitting activities in 23 jurisdictions significantly contribute to the non-attainment of the 1-hour and 8-hour[1] ozone national ambient air quality standards (NAAQS), or will contribute to the non-attainment of the 1-hour and 8-hour NAAQS in one or more downwind states in the eastern portions of the United States. In particular, New Jersey was cited as containing sources that contribute significantly to non-attainment with the 1-hour and 8-hour standards in Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania and Rhode Island. These conclusions have been developed with the use of data generated by the Ozone Transport Assessment Group (OTAG) and data obtained from public comments and other sources. OTAG also provided recommendations regarding cost-effective control measures that could provide significant NO_x emission reductions, including controls on large stationary point sources.

Based on the OTAG efforts and on its own analysis, on October 27, 1998, the United States Environmental Protection Agency (USEPA) promulgated its NO_x SIP call that required certain states, including New Jersey, adopt and submit SIP revisions to reduce the NO_x emissions that are contributing significantly to non-attainment in downwind states or interfere with maintenance of attainment in downwind states.[2,3] These reductions are to be achieved by meeting NO_x emissions budget caps that are imposed on each jurisdiction. Independent of the USEPA's call for SIP revisions, New Jersey is obligated under Section 110(a)(2)(D) of the Clean Air Act to include in its State Implementation Plan provisions prohibiting any source or other type of emissions activity from emitting air pollutants which will "contribute significantly to non-attainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary air quality standard."

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[1] On May 14, 1999, the United States Court of Appeals for the District of Columbia, remanded the 8-hour ozone health standard back to the USEPA on Constitutional grounds and indicated the USEPA could not enforce it. The Court did not question the scientific validity of the standard.

[2] On May 25, 1999, the United State Court of Appeals for the District of Columbia, ordered that the USEPA required State SIP submittal date of September 30, 1999 be stayed pending further review of the USEPA regional NOx program.

[3] Not withstanding the United States Court Appeals decision, on June 16, 1999 all Ozone Transport Commission (OTC) member jurisdictions with the exception of the State of Virginia, agreed to submit their regional NOx CAP SIP revisions on the original schedule of September 30, 1999. The modifications to New Jersey's rule proposed here will allow it to comport to the USEPA regional NOx Program.

Additionally, Section 126 of the Clean Air Act Amendments of 1990 provides that any state may petition the USEPA Administrator for a finding that any major source or group of stationary sources in another state emits or would emit any air pollutant in violation of the prohibition of Section 110(a)(2)(D) regarding significant contributions to non-attainment or maintenance with an air quality standard in that state. Five states (Connecticut, Maine, New Hampshire, New York, and Vermont) filed Section 126 petitions naming sources in New Jersey as contributing significantly to their non-attainment with the ozone health standards. With respect to the 1-hour ozone standard the USEPA has made an affirmative technical determination that New Jersey contains stationary sources that contribute significantly to non-attainment in areas within Connecticut and New York. Regarding the 8-hour standard, the USEPA has made an affirmative technical determination that New Jersey contributes significantly to non-attainment in Maine and New Hampshire.

Section 126 calls for relief where the USEPA found that New Jersey sources are emitting in violation of the "significant contribution" provisions of Section 110(a)(2)(D)(i) of the Clean Air Act. However, USEPA has sought to harmonize the similar "significant contribution" test requirements of Section 126 and Section 110(a)(2)(D). Considering that Section 110(a)(2)(D) is more inclusive, i.e., it involves a finding regarding all sources in a state, whereas Section 126 involves a finding with respect to stationary sources, the USEPA intends to defer the final granting of a petition by a state with respect to other states, as long as those other states are, and remain on, an expeditious schedule to submit their NO_x Budget SIPs and implement by May 2003 the requisite controls.[4]

This NO_x Budget Cap will (1) improve ozone air quality in New Jersey, (2) meet the SIP requirements placed on New Jersey by the USEPA's recent NO_x SIP Call rulemaking, (3) provide a major step by New Jersey toward meeting its obligations under Section 110(a)(2)(D) of the Clean Air Act, independent of the USEPA NO_x SIP Call, and (4) permit the USEPA to defer the granting of the relief sought by the other states against New Jersey in their Section 126 petitions naming New Jersey, by proceeding on an expeditious schedule to provide for the substantive equivalent of that relief sought.

B. USEPA's NOx SIP Call

On October 27, 1998, USEPA published its final finding that NOx emissions from sources in 23 jurisdictions (including New Jersey) significantly contribute toward the non-attainment of the National Ambient Air Quality Standard (NAAQS) for ozone in one or more downwind states throughout the eastern portion of the United States. In this Federal Register publication, (63 FR 57356), USEPA also required the 23 jurisdictions to adopt and submit revisions to the State Implementation Plan (SIP) in order to assure that the sources in each jurisdiction emit NOx at a level that does not significantly contribute to non-attainment or interfere with the maintenance of the ozone NAAQS in a downwind State. This USEPA requirement is herein called the "NOx SIP Call".

In the NOx SIP Call, USEPA established statewide NOx budgets for each of the 23 jurisdictions that would eliminate the significant contribution toward the attainment of the ozone NAAQS in downwind states. These levels were based on data generated by the Ozone Transport Assessment Group

[4] On June 24, 1999, 64 FR 33956, the USEPA announced it was temporarily staying, until November 30, 1999, the effectiveness of its final rule regarding the Section 126 Petitions.

(OTAG) and other sources. USEPA published final statewide budget figures for each of the 23 jurisdictions on in the Federal Register (64 FR 26298, May 14, 1999). These budgets are effective for each May 1 through September 30 period beginning in the year 2003. The following table shows New Jersey's NOx budget:

Source Sector	**Budget amount (tons)**
Electricity Generating Units	10,384
Non-electricity Generating Point Sources	17,863
Stationary Area Sources	12,431
Nonroad Sources	23,565
Highway Sources	35,890
TOTAL	100,133

USEPA's SIP Call allows affected states to establish a Cap and Trade program as a mechanism to comply with the statewide NOx Budget. The USEPA is establishing a regional trading program through which states may establish rules that would prescribe participation in such a USEPA administered program. The cap and trade program envisioned by USEPA for SIP Call purposes is nearly identical to the OTC NOx Budget Program that began in the 1999 ozone season. The NOx Budget Program rules apply to sources that comprise a portion of each of two sectors of the NOx SIP Call budget: electricity generating units and the non-electricity generating point sources. Through this proposed rulemaking, the Department is amending it's current rules in order for them to be used for the purposes of complying with the NOx SIP Call.

II. Summary of proposed amendments

The Department is hereby proposing amendments to its NOx Budget Program rules. The purpose for these proposed amendments are as follows:

A. To conform with the USEPA Ozone Transport NOx SIP Call allowance allocation requirements
B. New section regarding the NOx SIP Call Compliance Supplement Pool
C. Specify clear penalties for allowance shortfalls
D. Other miscellaneous changes

A. Conformity with NOx SIP Call allowance allocation requirements

The Department is proposing to amend the NOx Budget annual allowance allocation provisions at N.J.A.C. 7:27-31.7 primarily to address the timing requirements for allocation of allowances that are prescribed by USEPA in its NOx SIP Call. In the NOx SIP Call, USEPA has established that a State must meet certain requirements in order to qualify to participate in the regional trading program that will be administered by USEPA. Among these requirements is an allowance allocation timing requirement under which a state must allocate year 2003 allowances by September 30, 1999 and must

allocate following years' allowances by April 1 three years before the control period in which the allowances may first be used.

The allowance allocation in New Jersey's current NOx Budget Program rules at N.J.A.C. 7:27-31.7 is inconsistent with the NOx SIP Call's allocation timing requirement. Under the current rule, the Department allocates allowances up to one month before the control period in which the allowances may first be used. The Department has concluded that it is in the best interest of the owners and operators of NOx Budget sources in New Jersey that are regulated under the NOx Budget Program to be able to participate in USEPA's regional trading program. Therefore, the Department is proposing herein to amend several provisions of New Jersey's NOx Budget Program rules so that the Department's allocation of allowances will be done in accordance with the NOx SIP Call's timing requirement.

The proposed amendments are not intended to alter the fundamental principles on which allocation of NOx Budget allowances is carried out in New Jersey, only to make the minimal changes needed to adjust the allocation system so that the NOx SIP Call's timing requirement can be met. These changes are outlined below. The Department would continue to allocate allowances on an annual basis, however the timing of the allocation would be shifted to occur three years in advance of each control period.

Allocation to NOx Budget sources
The proposed amendments would base the allocation of year 2003 allowances to NOx Budget sources on the activity of each source in two control periods, selected from the years 1996, 1997 and 1998 in accordance with procedures currently in the NOx Budget Program rule. Year 2004 allowances would be allocated based on activity of each NOx Budget source during two control periods, selected from the years 1998, 1999 and 2000. The Department would allocate Year 2004 allowances by April 1, 2001, and this forward allocation procedure would continue on an annual basis thereafter.

The basic allocation methodology in the current NOx Budget Program rule at N.J.A.C. 7:27-31.7 provides for output based allocation to commence for year 2003 allowances. But since the NOx Budget Program rule does not call for the collection of output activity information (electricity and steam generation) of NOx budget sources to begin until the year 2000, these proposed amendments would delay output based allocation. Instead, at the earliest, output based allocation would begin with the allowances allocated by April 1, 2002 for the year 2005 control period.

Reserves
The proposed amendments would modify the provisions pertaining to allocating allowances to the New Source Reserve and the Growth Reserve established under the NOx Budget Program rules for the year 2003 control period and for subsequent control periods. The proposed amendments would also establish a new Incentive Reserve.

Under the current rule, the "New Source Reserve" holds allowances which are available to new budget sources and the "Growth Reserve" holds allowances which are available to low-emitting budget sources which need more allowances to cover an increase in emissions. The proposed

amendments would, for ease of administration, merge these two reserves and would set a fixed number of allowances to be allocated to the combined "New Source/Growth Reserve."

Under the current rule, the amount of allowances allocated for the New Source Reserve is based on recent information as to the anticipated number and size of new sources, and the amount of allowances allocated for the Growth Reserve is based on recent activity levels of the low-emitting sources. With the proposed changes to the timing of allocation, given the three year time lag between allocation and use of allowances, the current methods can no longer reliably assure that the size of the allowance set-aside will prove sufficient to meet the needs of the new sources and low-emitting sources three years hence. New methods for determining the amount of allowances to be allocated to the New Source/Growth Reserve are needed.

These amendments therefore propose annual allocation of a fixed number of allowances equal to 10 percent of the NOx Budget (i.e., 820 allowances) to the combined New Source/Growth Reserve. Accordingly, 820 allowances for the year 2003 control period (and annually for each control period thereafter) would be transferred to the New Source/Growth Reserve by September 30, 1999 (or the corresponding year thereafter). These allowances would remain in the reserve until November 15, 2003 (or the corresponding year thereafter). At such time, all of the allowances in the reserve will be allocated, based on the claims of new sources and of low-emitting sources with increased emissions. If, in 2003 or any year thereafter, it happens that there are not enough allowances in the New Source/Growth Reserve to meet all the eligible claims , then allowance allocations would be prorated, so that each claimant would receive a proportionally reduced number of allowances.

The 820 allowances would be sufficient to accommodate up to approximately 5,000 MW of new fossil fuel fired generation. This estimation is based on the presumption of natural gas fired combined cycle turbines using dry-low NOx cumbustors and Selective Catalytic Reduction (SCR) control technologies with a NOx emission rate of 3.5 ppm dry volume basis at 15% O_2 and operating at approximately 90% capacity during the control period. If emission rates or capacity factors are lower, this would allow more new electric generation capacity.

Under the current rule, "incentive" allowances are allocated to persons who make claims based on their saving of electricity through the implementation of certain environmentally beneficial techniques (such as eligible energy efficiency projects) or their generation of electricity through the implementation of certain environmentally beneficial techniques (such as use of renewable energy resources). Under the current rule, claims for eligible activities implemented during a particular control period would be allocated allowances from the following year's budget. For example, the approved claims for eligible activity occurring during the 1999 control period would receive year 2000 allowances. Due to the proposed changes to the timing of the allocation of allowances, "incentive" allowance claims can no longer be satisfied by allocating from next year's budget. Therefore, the amendments proposed herein would establish an "Incentive Reserve" and would propose annual allocation of up to a fixed number of allowances equal to 5 percent of the NOx budget (i.e., 410 allowances) to the Incentive Reserve. If, in 2003 or any year thereafter, it happens that there are not enough allowances in the Incentive Reserve to meet all the eligible claims, then allowance allocations would be prorated so that each claimant would receive a proportionally reduced number of allowances. Even though the amount of allowances available to be allocated to approved incentive claims is proposed to be a fixed value, the allocation would occur in the same manner as

written in the current rule with respect to which year's allowances are allocated to a particular year's eligible activities. That is, eligible activities occurring during the year 2003 would receive year 2004 allowances, the eligible activities occurring during the year 2004 would receive year 2005 allowances, and so on.

However, if in the year 2003 or any year thereafter it happens that there are more allowances in the New Source/Growth Reserve or the Incentive Reserve than are needed to meet in full all eligible claims, then the proposed amendments would allocate the remaining allowances in a tiered approach. First, any remaining allowances in either reserve would be used to meet any under-allocated claims on the other reserve. Second, if there are any allowances left in either reserve after all claims from both reserves are satisfied, then the remaining allowances in the reserve would be allocated to the NOx Budget sources that operated during the most recent control period. Each source's portion of the remaining allowances would be the percentage of the total which is the same percentage as it was entitled to of the total annual budget during the most recent allocation of allowances.

The proposed amendments make specific provision for incentive allowances earned during the 2002 control period. Given that the 2003 budget will be allocated by September 30, 1999, there would be no 2003 allowances available at the end of the 2002 control period to be used to meet the 2002 incentive claims, unless provision is made for these allowances to come from the 2003 Incentive Reserve. Therefore, these proposed amendments would authorize 2002 incentive claims to be met from the 2003 Incentive Reserve in a manner identical to the way such claims will be met in the years 2003 and beyond.

The proposed amendments would allocate the reserves after each control period and before the allowance transfer deadline. In the year 2003, the allowance transfer deadline is November 30 (or the first business day after November 30, if it falls on a non-business day). The data used as the basis for allocating the reserves is due to be submitted by October 30. This gives the Department a very short period of time to process the information and allocate the allowances before the allowance transfer deadline with an adequate amount of time for any final allowances transactions to occur. The Department realizes how important it is to allocate the reserves as quickly as possible after the control period and is committed to do so.

Other allowance allocation provisions

The proposed amendments also include a new provision that would prohibit allocation of allowances to a source that is no longer operating, even if it operated during any of the annual control periods that would have been used as the basis for the allocation of allowances. Since allowances would be allocated three years in advance under this proposal, inevitably certain of the sources that are allocated allowances would no longer be operating in the year for which the allowances were allocated. This provision is being proposed in order to minimize the allocation of allowances to sources that are not operating, and to ensure that no source will continue to be allocated allowances for more than three years after it has ceased operating. The provision would not, however, require that the owner or operator of a source that has ceased operating return the allowances that have been allocated for that source. Additionally, this provision would not apply in a case where the source is not operating because it is undergoing repairs.

In order to address the NOx SIP Call requirement to allocate year 2003 allowances by September 30, 1999, these proposed amendments include proposed allocation of year 2003 allowances. This allocation is set forth in a table at N.J.A.C. 7:27-31.7(k). The table shows that 410 allowances would be set aside for the Incentive Reserve, 820 allowances would be set aside for the New Source/Growth Reserve, and the remaining 6970 allowances would be distributed among the currently operating budget sources, in accordance with the allocation methodology specified in the proposed rule. The Department relied on 1996 through 1998 data in computing the number of allowances to be allocated to each NOx Budget source.

B. New section regarding the NOx SIP Call Compliance Supplement Pool

For each jurisdiction covered by the SIP Call, the USEPA NOx SIP Call authorized the allocation, on a one-time basis, of a number of additional allowances. These additional allowances are referred to as a compliance supplement pool. New Jersey's compliance supplement pool is 1,479 allowances. These allowances are only valid for use for the 2003 and 2004 control periods.

The SIP Call prescribes two purposes for which allowances in the compliance supplement pool may be allocated: early reductions and direct distribution to sources after demonstrating need. The Department has incorporated provisions for both these options consistent with 40 CFR 51.121(e)3 into this new section.

The Department is proposing to allocate, by May 1, 2003, allowances from the New Jersey compliance supplement pool first to persons who retire a banked 1999 to 2002 OTC NOx Budget Program allowance. Allowances allocated and banked between 1999 and 2002 under the OTC NOx Budget Program will not be recognized in USEPA's regional NOx Budget Program in 2003 and thereafter, unless they are retired as "early reductions" and, through doing so, exchanged for allowances from the compliance supplement pool. In its preamble o the SIP Call proposal and the final rule, USEPA has recognized that banked OTC NOx Budget Allowances are considered to be early reductions for the purpose of allocating allowances from the compliance supplement pool. Therefore, the Department is proposing herein to provide the holders of OTC NOx Budget Program allowances the opportunity to retire these allowances and receive in their place early reduction allowances from the compliance supplement pool, consistent with USEPA's regional NOx Budget Program.

If, by April 1, 2003, there are 1,479 or fewer banked allowances in the compliance accounts of New Jersey budget sources, then the Department would allocate one allowance from the compliance supplement pool for each banked and retired NOx Budget Program allowance . After so allocating early reduction allowances from the compliance supplement pool, any remaining allowances would be allocated as discussed in the next paragraph. If there are more than 1,479 allowances in the compliance accounts of New Jersey budget sources which the holders wish to convert to regional NOx Budget Program allowances, then the compliance supplement pool allowances would be allocated to the holders of banked OTC NOx Budget Program allowances on a prorated basis.

If there are allowances left in the compliance supplement pool after allocating allowances for early reductions (that is, exchanging banked OTC NOx Budget Program allowances for compliance

supplement pool allowances, as discussed in the previous paragraph), then the Department may allocate the remaining allowances to the owners and operators of NOx budget sources based on need and based on a written commitment to install advanced NOx controls designed to achieve a NOx emission rate reduction by at least 90 percent or to achieve an equivalent emission rate reduction through repowering. The requirements for the demonstration of need are proposed at N.J.A.C. 7:27-31.22(b)6i through iv and the requirement for a public hearing process to take place before allocating allowances based on the demonstration of need are taken directly from 40 CFR 51.121(e)3.

C. Specify clear penalties for allowance shortfalls

After proposing the penalty schedule for violations of NOx Budget Program provisions in 1997 (29 N.J.R. 3924(b), September 15, 1997), the Department received several comments during the public comment period which pointed out that the penalty schedule was not clear as to the penalty amount associated with failure to obtain the proper number of allowances by the allowance transfer deadline. Therefore, when the Department adopted the NOx Budget Program rules (30 N.J.R. 2600(a), July 20, 1999), the Department reserved provisions for the stipulation of the penalty for violations of N.J.A.C. 7:27-31.3(i). In these proposed amendments, the Department is proposing a new penalty structure for violations of this provision.

The new proposed language expands the explanation and guidance for the calculation of the allowance shortfall penalty. This new penalty structure remains consistent with the principles of allowance shortfall penalties of the model rule. The model rule indicates that each ton of excess emissions is a separate penalty and the entire control period (153 days) is to be initially considered the duration of the of the violation. For a particular control period during which an allowance shortfall occurs, the penalty amount would be calculated as follows: a $2,000 per ton penalty would be levied for each of the first ten tons of shortfall, additionally a $4,000 per ton penalty would be levied for each of the subsequent ten tons of shortfall, additionally a $10,000 per ton penalty would be levied for each of the subsequent 30 tons of shortfall, additionally a $30,000 per ton penalty would be levied for each of the subsequent 50 tons of shortfall, and additionally a $50,000 per ton penalty would be levied for each subsequent ton of shortfall. This proposed calculated penalty amount, based on the severity of the allowance shortfall, is limited by a statutory maximum penalty limit of $10,000 per day for the first offense level, $25,000 per day for the second offense level and $50,000 per day for the third and each subsequent offense levels. The offense level is determined by the number of control periods within five years in which an allowance shortfall occurs. N.J.A.C. 7:27A-3.5(f) states the Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense. Therefore, any allowance shortfall for the 1999 control period will be limited by the first offense level of $10,000 per day. This maximum penalty amount represents the intention embodied in the footnote of the penalty schedule proposed in 1997, which presumes each day of the control period constitutes a day of violation. Finally, under the proposed new language, the authorized account representative may attempt to prove that there are a lesser number of days of violation in the control period in order to have the Department adjust the maximum penalty.

Therefore, at the first offense level, a one ton shortfall would be assessed a penalty of $2,000, and a ten ton shortfall would be assessed a penalty of $20,000. And, to give a more complex example,

the following demonstrates a hypothetical penalty calculation for a budget source that emitted 600 tons of NOx during the 1999 control period and had only 500 allowances in the source's compliance account as of the allowance transfer deadline. The amount of the shortfall would be 100 tons, the penalty would be calculated as follows:

Tons of shortfall :	Penalty per ton ×	Number of tons of shortfall =	Penalty
1 - 10 :	$2,000 ×	10 =	$20,000
11 - 20 :	$4,000 ×	10 =	$40,000
21 - 50 :	$10,000 ×	30 =	$300,000
51 - 100 :	$30,000 ×	50 =	$1,500,000
Total		100 =	$1,860,000

Since shortfalls in 1999 would be at the first offense level, the maximum penalty limit would be $10,000 per day of violation. Under the proposed language, the Department would presume that the shortfall for the control period applies to each day of the entire control period, that is 153 days of violation. Therefore, the maximum penalty limit in this case would be $1,530,000 (that is, $10,000 per day times 153 days). The Department would assess a penalty amount that is the lesser of the penalty calculated for the shortfall or the statutory maximum penalty per day. Therefore, the Department would assess a penalty of $1,530,000 in this case, and the authorized account representative would have the opportunity to prove to the satisfaction of the Department that a lesser number of days of violation occurred during the control period. The Department will make a determination on a case-by-case basis and the Department's decision is final. If this allowance shortfall scenario would be repeated for the same source in the year 2000, the maximum statutory penalty would be based on the second offense level.

D. Other miscellaneous changes

N.J.A.C. 7:27-31.1 Purpose and Scope

The Department is proposing to add provision that refers to the USEPA's SIP Call requirements at 40 CFR 51.121 and USEPA's model trading program rule at 40 CFR 96. This provision generally states that the NOx Budget Program rules are a means of complying with the cited USEPA regulations within the State of New Jersey. The definition of "NOx Budget Trading Program" at 40 CFR 96.2 conveys a similar concept.

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

The proposed amendments would revise the definitions of "allowance transfer deadline." The allowance transfer deadline is proposed to be changed from December 30 to November 30 beginning in the year 2003. Additionally, provision is made to adjust the allowance transfer deadline if November 30 does not fall on a business day. This proposed change is being made to align the deadline with what is prescribed in the USEPA Final NOx SIP Call for the regional trading program and is consistent with 40 CFR 96.

New definitions of "account certificate of representation," "data acquisition and handling system" or "DAHS," "serial number," and "ton" are being proposed consistent with the definitions at 40 CFR 96.2.

The definition of "continuous emissions monitoring system" is being amended to be more consistent with the one at 40 CFR 96.2.

The definition of "new budget source" is proposed to be altered for the years 2003 and beyond as a result of the change in the timing of the allocation of allowances as discussed above. This change would allow new sources that had not been allocated allowances for a particular control period to be able to continue to draw allowances from the New Source Reserve until enough operating data is collected for the source for it to be allocated through the general methodology.

N.J.A.C. 7:27-31.3 Applicability and general provisions
The proposed amendments would amend subsection (b) in order to assure that the New Jersey NOx Budget would never be larger than that determined by USEPA in the event that USEPA would make any future changes.

At subsection (i), the Department has proposed an amendment that would make clear that both the three-for-one allowance excess emission deduction and civil administrative penalties would apply if the owner or operator of a NOx budget source fails to hold enough allowances by the allowance transfer deadline. This new provision is consistent with the language at 40 CFR 96.6(d).

N.J.A.C. 7:27-31.4 Opt-in provisions
In the opt-in provisions section at N.J.A.C. 7:27-31.4(c)4 and (e)2, the proposed amendments would remove reference to the monitoring guidance document. This document will no longer be the appropriate guidance for the years 2003 and beyond. The provision would continue to reference N.J.A.C. 7:27-14, which specifies the proper guidance for all years.

N.J.A.C. 7:27-31.9 Permits
At (a)1, the Department is proposing to reference the allowance transfer deadline rather than the absolute date of December 31, because the date of the allowance transfer deadline would generally change from December 31 to November 30 starting in the year 2003. Additionally, the allowance transfer deadline will be adjusted in the case when November 30 does not fall on a business day.

The Department is proposing a new provision at (g) that would explicitly state that the requirements of the NOx Budget Program must be incorporated into an operating permit upon renewal of the permit. This language is intended to be consistent with 40 CFR 96.21(c).

7:27-31.10 Allowance use, transfer and retirement
The Department is proposing to amend (c) to properly refer to the allowance transfer deadline.

The Department is amending (e) and (f) in order to make the provisions regarding the receipt and recordation of allowance transfer requests consistent with the provisions at 40 CFR 96.6.

The Department has added a provision at (k) regarding the interstate trading of allowances. This proposed new provision would prevent allowances from other states from being used in New Jersey if the other state does not have comparable rules or is not implementing such rules. When the Department underwent the rulemaking for the current rule, it did not believe that such provisions were necessary. Now, since Maryland's NOx Budget Rule has been effectively remanded through a court action for further agency action and since Maryland's allowances had already been allocated, the Department believes these provisions are necessary to help maintain the integrity of the NOx Budget Program.

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

At subsection (b), the Department is proposing to delete the parenthetical date (December 31) which follows the reference to the allowance transfer deadline.

The Department is proposing an amendment to (c) regarding the timing of the calculation of the progressive-flow-control provisions. These provisions of the current rule would require some banked allowances to be used on a two-for-one basis if the total number of banked allowances in the entire multi-state program is greater than ten percent of the seasonal budget. The current OTC NOx Budget program prescribes calculation of the number of banked allowances that exist by the NATS Administrator by March 1 or each year. Under USEPA's regulations at 40 CFR 96.55(b), this calculation would take place by May 1 each year beginning in the year 2004. This Department is proposing dates consistent with the USEPA program.

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

This section pertains to the crediting of certain activities in 1997 and 1998 that reduced NOx emissions from budget sources before the 1999 ozone season. When the Department adopted the current rule, language pertaining to the determination of the baseline actual emission rate for operations that commenced activity after 1990 had been inadvertently omitted. Even though no more applications for early reductions are able to be made through these provisions, the Department is making the clarification for the record.

The model rule provides that early reduction allowances may be granted for emission rates that are less than the most stringent of the following:

- The level of control required by the OTC MOU;
- The permitted allowable emission rate for the source, unless the source is a replacement source for repowering whereupon the level of control required by the OTC MOU would supersede the permitted allowable emissions for purposes of establishing early reduction credit;
- The actual emission rate for the 1990 control period; or,
- Actual emission rate 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.

The current rules at N.J.A.C. 7:27-31.12 provide for these emission rates, but the baseline actual emission rate for the purpose of calculating early reductions from post 1990 sources needs

clarification at N.J.A.C. 7:27-31.12(e)1. The five years of actual emissions data for post 1990 sources was required to be submitted in the application as set forth at N.J.A.C. 7:27-31.12(c)7 of the current rule. Therefore, the Department is proposing to clarify how post 1990 sources determine the actual emission baseline in the provisions of the rule. Use of the actual emission baseline is necessary for the early reductions to the real and surplus as required by this rule, the model rule and federal requirements. This provision does not affect the early reduction applications approved by the Department as listed in a notice published in the New Jersey Register on April 19, 1999 at 31 N.J.R. 1108(b).

N.J.A.C. 7:27-31.13 NOx Allowance Tracking System

The Department is proposing to amend (i) in order to specify a slightly different certification statement for the program for the 2003 control period and thereafter. This proposed new certification statement is identical to the one specified by USEPA and cited under 40 CFR 96.13(a)(4).

The Department is proposing to amend (j) to be consistent with 40 CFR 96.51.(c) which states that each authorized account representative shall be assigned a unique identification number.

The Department is proposing to amend subsection (k) so that it would require submission of a revised certificate of account representation within 30 days following any change in the owners and operators of a NOx Budget source. This revision is consistent with the provision at 40 CFR 96.12(c)2.

Proposed new subsection (o) would establish a standard general certification statement to be signed by the AAR. This statement is identical to the one at 40 CFR 96.10(e)1.

Proposed new subsection (p) would provide that the NATS Administrator has the authority under these rules to correct transactional errors in the NATS. This provision is consistent with 40 CFR 96.56.

The Department is proposing new subsections (q) and (r) that would grant the NATS Administrator the ability to close general accounts in the NATS upon request of the AAR or after the account is inactive for an extended period of time (one year or more).

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

The provisions at (a), (e), (f), and (g) that refer to the monitoring guidance documents for use under the current OTC NOx Budget Program are being amended so that the proper time period is being referenced for their use.

New provisions at (i) through (aa) are being proposed for the use of monitoring and reporting of data from Budget Sources consistent with the NOx Budget Program under the context of the USEPA SIP Call. Except for some terminology and citation differences, these proposed provisions are identical to the provisions at 40 CFR 96.70 through 96.76.

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

At subsection (d), the Department is proposing the to require budget sources to report net electric output and steam output from the Electronic Data Report (EDR) in order for the Department to

collect the data necessary to allocate allowance in accordance with the porvisions at N.J.A.C. 7:27-31.7.

7:27-31.17 End-of-season reconciliation
In subsection (e), the Department is proposing to refer to the allowance transfer deadline instead of the calendar date, December 31.

Under new subsection (j), the Department is proposing to clarify how allowances would be deducted from more than one budget source operating and monitoring emissions under a common stack scenario. This provision is consistent with 40 CFR 96.54(e).

7:27-31.18 Compliance certification
At subsection (b), the Dpeartment is proposing to delete the parenthetical date (December 31) which follows the reference to the allowance transfer deadline.

The Deparmtent is proposing new subsection (e) that would allow the Department to make adjustments based on an audit of the information submitted in the complaince certification reports. This provision is consistent with 40 CFR 96.31.

ENVIRONMENTAL IMPACT

These proposed amendments are expected to have a negligible impact on the environment since they are minor changes to the current rule which prescribes NOx emission reductions from large combustion sources within New Jersey.

The underlying purpose of the the NOx Budget rule is to reduce the formation of ground-level ozone. In the presence of sunlight, volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) and other compounds in the ambient air react to form ozone. Ozone is a know respiratory irritant. Short-term effects on healthy exercising adults and children from exposure to elevated ozone concentrations include coughing, painful breathing and loss of certain lung functions. The connection between respiratory disease and high levels of ozone has been reported by the University of Medicine and Dentistry (UMDNJ). After studying data from nine central New Jersey hospitals, UMDNJ researchers found that the incidence of asthma attacks rose from seven to ten percent when elevated levels of ozone were reported by the Department. (Cody, R.P., Weisel, C.P., Birnbaum, G., and Lioy, P.J., "The Effect of Ozone Associated with Summertime Photochemical Smog on the Frequency of Asthma Visits to Hospital Emergency Departments," Environmental Research, 1992.) These effects are exacerbated in sensitive populations, particularly the elderly, those with preexisting respiratory diseases and children who play outdoors. Long-term effects are also of concern, because much of New Jersey's population has been exposed to unhealthful levels of ozone throughout their lifetime. Although chronic effects have not been conclusively determined, repeated exposure to ozone over a lifetime causes biochemical and structural changes in the lung and may be a causal factor in the development of chronic respiratory diseases.

Increased ozone levels also cause damage to foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this impact on sensitive plants. Subsequent

effects include reduced plant growth and decreased crop yield. The oxidizing properties of ozone lead to accelerated degradation of various man-made materials as well, such as rubber, plastics, dyes and paints.

The NOx emission limits in the current rule is expected to contribute significantly to lower the formation of ozone in the ambient air and to progress toward attainment of the National Ambient Air Quality Standard for ozone in New Jersey, in the Ozone Transport Region, and in other areas affected by the transport of this ozone precursor. The resulting reduction in ambient ozone concentrations should diminish the occurrence of the adverse health effects and the damage to the environment described above.

In 1990 the emissions from budget sources totaled over 46,500 tons of NO_x during the ozone season (May 1 through September 30). By 1995, following the Department's 1993 promulgation of N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, emissions of NO_x during the ozone season were reduced to about 21,200 tons per year. Under the rules proposed herein, these emissions would be reduced further to about 17,340 tons per ozone season in 1999 through 2002, and to about 8,200 tons per ozone season in 2003 and each year thereafter. Overall the emission reductions called for by the current rule is close to an 80 percent reduction in NO_x emissions during the ozone season between 1990 and 2003. To achieve this overall reduction, some of the higher-emitting sources are expected to reduce their emissions by 90 percent or more.

ECONOMIC IMPACT

The proposed amendments are expected to have a negligible economic impact. These changes are predominately administrative in nature. The basic components of the NOx Budget Program remain unchanged. The following paragraphs explain the Department's opinions about the economic effects of the few proposed changes for the years 2003 and beyond that may have some economic impact on companies that must comply with the NOx Budget Program rules.

Allocating allowances 3 years in advance of each control period -- This change as prescribed by the USEPA, would tend to create a more stable allowance market. By allocating allowances 3 years in advance, rather than one month in advance, this would give companies more time to plan a compliance strategy. With better compliance planning being made, the allowance market would tend to work more efficiently and the price of allowances would better reflect the cost of controlling NOx emissions from Budget sources.

Fixed reserves -- By allocating allowances three years in advance, the New Source/Growth Reserve and the incentive Reserve need to be a fixed value. The Department has set up the distribution of these reserves in a cascading manner so that claimants of these reserves would receive up to the full amounts being claimed before distributing any leftover allowances to NOx Budget Sources. By fixing the amount of allowances in the Incentive Reserve, rather than allocating directly from the following years budget, there may not be enough allowances to fully satisfy all claims and the economic benefit to approved claimants may be less than in the current rules. The same effect holds true for new sources and sources eligible to claim allowances for "growth" purposes. Under the current rule, new sources would be guaranteed to receive all the allowances they need to operate for the first two

ozone seasons, as long as the new sources do not exceed their allowable emission rate. Under the proposed amendments, there is a greater probability that claimants of the incentive reserve would receive a lesser quantity of allowances, and therefore, a smaller monetary value. Under the proposed amendments, there is a greater probability that claimants of the new source/growth reserve would need to purchase some allowances in order to authorize their emissions of NOx.

Penalty -- The penalties for noncompliance with the requirement to hold enough allowances to authorize the NOx emissions from budget sources are being proposed in addition to the automatic three-for-one allowance penalty provision. The proposed new penalty is designed to impose a reasonable economic impact on persons who violate the fundamental compliance mechanism of the program, and therefore, provide additional incentive for compliance.

SOCIAL IMPACT

Since the proposed changes to this rule are relatively minor, they are expected to have a negligible social impact. However, the current rules have a great social impact in that they minimize the NOx emissions from the sources applicable to the rule and provide a great air quality benefit to New Jersey and the region. The Department depends greatly on the NOx emission reductions associated with this rule in its plans to progress toward attainment of the National Ambient Air Quality Standard for ozone. Further, these rules prescribe New Jersey's participation in a larger 22 State SIP Call Cap and Trade Program. The participation of other states in the reduction of transport of ozone precursors into New Jersey is expected to achieve air quality benefits in New Jersey that would not be possible from the reduction of emissions in New Jersey alone. The citizens of New Jersey will all benefit from the expected air quality improvements associated with this program.

REGULATORY FLEXIBILITY STATEMENT

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping and other compliance requirements that the proposed new rules would impose upon small businesses. The Regulatory Flexibility Act defines "small business" as "any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees." Based upon this definition, some of the facilities that would be subject to the NO_x Budget Program are owned or operated by small businesses.

The Department has taken measures to minimize the adverse impact of the current NO_x Budget Program upon small businesses. Most small businesses with sources subject to the program have sources with emissions that are less than 0.15 pounds of NO_x per MMBtu's of fuel consumed. The allocation system in the current rule simplifies compliance for such sources by ensuring that they are allocated sufficient allowances to meet their compliance obligations. Due to the proposed changes in the allocation system, sources eligible for the new source/growth reserve would have a greater probability that the reserve would not completely supply all the allowances these source would need. An eligible source of the new source/growth reserve is one that has an emission rate of 0.15 pounds of NOx per MMBtu, or less, and that is either a new source or an existing source that increased its

activity above the average fuel use to allocate allowances. The owners or operators of such sources would therefore need to take into account the possibility of purchasing some allowances into their plans to comply with the NOx Budget Program for the years 2003 and thereafter. Such existing sources would have over three years to make any such arrangements to purchase allowances, and such new sources would have up to three to years make any such arrangements to purchase allowances. The Department believes that the proposed amendments do not place small businesses in a competitive disadvantage because they affect all budget units having low NOx emission rates in a similar manner. The requirement for the owner or operator of a budget source to obtain enough allowances to authorize NOx emissions under this program is part of the operational requirements of any such units. Therefore, the Department has not made any special consideration of small businesses.

FEDERAL STANDARDS ANALYSIS

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

JOBS IMPACT

The proposed amendments are expected to have negligible impacts on employment in New Jersey.

AGRICULTURAL IMPACT

The proposed amendments are expected to have no impact to the agricultural industry of New Jersey. However, the air quality improvements expected to be realized in New Jersey as a result of the NOx Budget Program in concert with other ambient ozone control strategies is expected to have a positive impact on the agricultural industry in New Jersey by reducing the damage to sensitive crops by high concentrations of ground-level ozone.

Full text of the proposed amendments follows (additions indicated in boldbace **thus**, deletions indicated in brackets **[**thus**]**):

7:27-31.1 Purpose and scope

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

7:27-31.2 Definitions

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

. . .

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

. . .

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

. . .

"Continuous emissions monitoring system" means a system of equipment that samples, analyzes, and determines, on a continuous basis (at least once every 15 minutes), for a given source or group of sources, mass emissions of one or more air contaminants per time period and per heat input, and that

records the results in order to provide a permanent record of such data. The following are component parts of a continuous emissions monitoring system required under this subchapter:

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

[4.**]** **5.** A data acquisition and handling system.

. . .

"Data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under N.J.A.C. 7:27-31.14 -31.16, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by N.J.A.C. 7:27-14.

. . .

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

1. - 2. (No change.)
3. **[**Has**]** **For each of the years 1999 through 2002, has** not yet operated for two full May 1 through September 30 periods **; and for the each of the years 2003 and thereafter, has not commenced operation in order to be allocated allowances pursuant to N.J.A.C. 7:27-31.7(l) or (d)3 through 4** .

. . .

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

. . .

"Ton" means 2,000 pounds.

. . .

7:27-31.3 Applicability and general provisions

(a) (No change.)

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

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

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

(a) - (h) (No change.)

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

(j) - (o) (No change.)

7:27-31.4 Opt-in provisions

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

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

1. - 3. (No change.)

4. An emission monitoring plan for the source operation consistent with the requirements at N.J.A.C. 7:27-31.14 **[**and the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program**];[**"**]**

5. - 6. (No change.)

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

1. (No change.)

2. The proposed opt-in source is not a type of source for which an emissions monitoring plan consistent with **[**the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and**]** the requirements at N.J.A.C. 7:27-31.14 can be developed.

7:27-31.7 Annual allowance allocation

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

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

1. - 2. (No change.)

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

i. The Department shall allocate allowances to meet **[**claims which were**]** **each claim which was** submitted to the Department by October **[**15**]** **30** of the current year and which **[**have**]** **has** been approved by the Department pursuant to N.J.A.C. 7:27-31.8 **. The number of allowances to be allocated will be calculated** in accordance with the following equation:

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

Where:
1.50 = The rate, expressed in pounds per MW-hr, at which allowances are allocated for the implementation of environmentally beneficial techniques that result in the saving or generation of electricity;
E = The amount of saved or generated electricity, expressed in MW-hr, in the approved claim pursuant to N.J.A.C. 7:27-31.8; and
2,000 = The factor for converting pounds into tons;

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

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

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

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

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

Where:

A_{Claim} = **The number of allowances preliminarily determined to be allocated to the claimant, as determined in (c)3i above;**

A_{Total} = **The sum of allowances preliminarily determined to be allocated to each of the claimants, as determined in (c)3i above; and**

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

(d) **[**Prior to**]** **For** the control period in the year 2003 **, allowances are allocated in accordance with (l) below. For the control period in the year 2004** and in each year thereafter **, the Department will allocate allowances by the applicable allocation deadline (that is, by April 1, 2001, for the allowances to be allocated for the 2004 control period; and by the April 1 which is three years before the beginning of each control period for each control period thereafter). Prior to the allocation deadline** , the Department shall transfer 4,822 allowances from **[**the**]** **New Jersey's** base emission budget for **[**New Jersey**]** **the control period for which allowances are being allocated** into the attainment reserve account held by the Department **[**, leaving 8,200 of 13,022 allowances of the base budget for New Jersey to be allocated. The Department shall allocate 8,200 allowances minus any allowances that have been previously allocated pursuant to (c)3ii above, (e)3ii below, (i) below or pursuant to N.J.A.C. 7:27-31.17(h). This subsection does not apply to opt-in sources; opt-in sources

are addressed separately in subsection (f) below**]** . The Department shall allocate **the remaining 8,200** allowances in accordance with the following steps:

1. Step 1: **[**This step determines the number of allowances which are to be allocated**]** **Allocation** to the New Source **/ Growth** Reserve. The **first** purpose of this reserve is to hold aside **[**a pool of**]** allowances, so that they are available for distribution after the control period to new budget sources **[**which have not operated for two full May 1 through September 30 periods**]** . **The second purpose of this reserve is to hold aside allowances for budget sources that have low NOx emission rates so the allowances are available for distribution after the control period to any of these low NOx emission rates sources that emit more tons of NOx that the number of allowances allocated for the sources for the particular control period. The Department shall allocate 820 allowances into this reserve.** **[**The number of allowances to be allocated to this reserve in this step is based on each new budget source's allowable emissions for the control period. For each new budget source, the Department shall allocate allowances from the New Jersey emission budget into the New Source Reserve in accordance with the following equation:

$$\text{Allowances} = \frac{\text{Allowable Emission Rate} \times \text{Allowable Activity}}{2{,}000}$$

Where:

Allowable Emission Rate = The allowable emission rate, expressed in pounds per unit of activity. If more than one fuel is allowed to be used, the allowable emission rate shall be the weighted average of the allowable emission rates for each fuel type; the weighting of this average shall be based on the maximum allowable consumption of the fuel associated with the highest allowable NOx emission rate. If the allowable emission rate for a given fuel is greater than 0.15#/MMBtu, then 0.15#/MMBtu shall be used as the allowable emission rate for the purpose of this equation. If the allowable emission rate for a given fuel for an industrial boiler or process heater is greater than 0.20#/MMBtu, then 0.20#/MMBtu shall be used as the allowable emission rate for the purpose of this equation;

Allowable Activity = The maximum allowable activity of the source for the control period which is based on the lesser of the maximum capacity and any limit on the activity during the control period as established by any law, rule or permit; and

2,000 = The factor converting pounds into tons;**]**

[2. Step 2: This step determines the number of allowances which are to be allocated to the Growth Reserve. The purpose of this reserve is to hold aside a pool of allowances, so that they are available for distribution after the control period to certain budget sources to accommodate an increase in fuel use. The number of allowances to be allocated to this reserve in this step is based on up to a 50 percent increase in the average heat input of budget sources having emission rates not greater than 0.15 pounds per MMBtu. The number of allowances to be allocated to the reserve is calculated in accordance with the following procedure for each budget source that is not a new budget source:

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

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

Where:

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

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

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

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

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

(1) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (d)2i above is greater than 0.20 pounds of NO_x per MMBtu, then no allowances shall be allocated to the Growth Reserve with respect to that source; and

(2) If the NO_x emission rate as calculated in (d)2i above is not greater than 0.20 pounds of NO_x per MMBtu, then allowances shall be allocated to the Growth Reserve in accordance with (d)2iv below;

iii. If the source is utilized for the purpose of electric or steam generation or both and is not an industrial boiler nor a process heater, the number of allowances to be allocated to the Growth Reserve is determined in accordance with the following procedure:

(1) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (d)2i above is greater than 0.15 pounds of NO_x per MMBtu, then no allowances shall be allocated to the Growth Reserve with respect to that source;

(2) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in (d)2i above is not greater than 0.15 pounds of NO_x per MMBtu, then allowances shall be allocated to the Growth Reserve in accordance with (d)2iv below;

iv. The number of allowances to be allocated to the Growth Reserve pursuant to ii(2) and iii(2) above shall be calculated in accordance with the following procedure:

(1) Calculate 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input in accordance with the following equation:

$$H_{150\%} = 1.5 \times \left(\frac{H1 \quad H2}{2} \right)$$

Where:

$H_{150\%}$ = 150 percent of the average actual heat input of the two control periods, out of the last three years, which had the highest heat input;

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

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

(2) If $H_{150\%}$, as determined in (d)2iv(1) above, is not greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = ER_{NOx} \times 0.5 \times \frac{(H1 \quad H2)}{2} \times \frac{1}{2{,}000}$$

Where:

ER_{NOx} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in(d)2i above;

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

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

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

(3) If the result of (d)2iv(1) above is greater than the maximum allowable heat input of the source during the control period, then number of allowances to be allocated to the reserve is calculated in accordance with the following equation:

$$\text{Allowances} = ER_{NOx} \times \left(H_{Allowable} \quad \frac{(H1 \quad H2)}{2} \right) \times \frac{1}{2{,}000}$$

Where:

ER_{NOx} = The average actual NO_x emission rate, expressed in pounds per MMBtu, as calculated in (d)1i above;

$H_{Allowable}$ = The maximum allowable heat input of the source for the control period which is based on the lesser of the maximum heat input capacity and any limit on the heat input during the control period as established by any law, rule or permit;

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

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

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

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

[3. (Reserved.)**]**

[4.**]** **3.** Step 3: **[**This**]** **Except as provided in (j) below, this** step is a preliminary determination of the number of allowances which are to be allocated in (d)**[**5**]** **4** (Step 4) below to each budget source that is not a new budget source **or an opt-in source**. In this step, the Department shall preliminarily determine the number of allowances to be allocated to each budget source that is not a new budget source **or an opt-in source**, in accordance with the following procedure:

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

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

Where:

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

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

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

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

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

(1) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in **[**(d)2i**]** **(d)3i** above is greater than 0.20 pounds of NO_x per MMBtu, then the number of allowances to be allocated to the source is preliminarily determined in accordance with the following equation:

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

Where:

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

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

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

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

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

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

Where:

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

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

$$E_{Allowable} = \frac{\sum_{i=1}^{n} \left(AER_i \times (H1_i \quad H2_i) \right)}{2} \times \frac{1}{2{,}000} \qquad \text{Equation 2}$$

Where:

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

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

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

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

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

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

Where:

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

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

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

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

(1) If the average NO_x emission rate (ER_{NOx}) of the source as calculated in **[**(d)2i**]** **(d)3i** above is greater than 0.15 pounds of NO_x per MMBtu, then **for allocating year 2003 and 2004 allowances, the number of allowances for the source shall be preliminarily determined in accordance with the equation at (b)4i above, and then for allocating the allowances for the year 2005 and each year thereafter,** the number of allowances for the source is preliminarily determined in accordance with the following equation:

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

Where:

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

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

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

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

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

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

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

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

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

Where:

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

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

$$E_{Allowable} = \frac{\sum_{i=1}^{n} \left(AER_i \times (H1_i \quad H2_i)\right)}{2} \times \frac{1}{2{,}000} \qquad \text{Equation 2}$$

Where:

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

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

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

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

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

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

Where:

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

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

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

[5.**]** **4.** Step 4: The Department shall allocate the remainder of the allowances as follows:

i. The sum of the following shall be determined:

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

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

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

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

ii. If the sum in (d) **[**5**]4**i above is less than or equal to 8,200, then the Department shall allocate allowances as follows:

(1) Allowances shall be allocated to each budget source that is not a new budget source, as preliminarily determined in (d)**[**4**]** **3** (Step 3) above; and

(2) Any remaining allowances that were not allocated in (d)1 (Step 1), (d)2 (Step 2), or (d)**[**5**]4**ii(1) above shall be allocated to the Department's attainment reserve account; or

iii. If the sum determined in (d)**[**5**]** **4**i above is greater than 8,200, then the Department shall allocate the remaining allowances to budget sources in proportion to the amount of preliminarily determined in (d)**[**4**]** **3** (Step 3) above. The proportional share to be allocated to each shall be determined as follows:

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

Where:

A0 = The total number of allowances that have been previously allocated pursuant to **[**(c)3ii above, (e)3ii below,**]** (i) below or pursuant to N.J.A.C. 7:27-31.17(h)

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

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

PA = The number of allowances preliminarily determined for allocation to the source as determined in (d)**[**4**]** **3** (Step 3) above; and

PA_{Total} = The sum of all allowances preliminarily determined for allocation to all budget sources in (d)**[**4**]** **3** (Step 3) above.

(e) **[**After**]****For** the control period of the year 2003 and of each year thereafter, the Department shall allocate allowances from the New Source **[**Reserve, the**]** / Growth Reserve, and Incentive Allowances as follows:

1. The Department shall **[**allocate the**]** **preliminarily determine the number of** allowances **[**in the New Source Reserve by November 30 of the current year**]** **to be allocated from the New Source/Growth Reserve** as follows:

i. For any new budget source, the Department shall **[**allocate**]** **preliminarily determine the number of** allowances **to be allocated to each new source from the New Source/Growth Reserve. This number shall** equal **[**to**]** the number of tons of NO_x emitted by the source during the control period, unless the emissions exceed:

(1) (No change.)

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

[ii. If there are allowances left in the New Source Reserve after distributing the allowances in accordance with (e)1i above, then the Department shall allocate such allowances in accordance with (e)4 below;**]**

[2. The Department shall allocate the allowances in the Growth Reserve by November 30 of the current year as follows:**]**

[i. The only sources that are eligible to be allocated allowances from the Growth Reserve in**]**

ii. For any eligible budget source, if the number of tons of the source's NOx emissions during the past control period was greater than the number of allowances allocated for the source for that control period, then the Department shall preliminarily determine the number of allowances to be allocated to the source from the New Source/Growth Reserve . Under this subparagraph **the budget sources that are eligible** are industrial boilers or process heaters that emitted NOx at a rate less than or equal to 0.20

pounds per MMBtu heat input and other budget sources that emitted NO_x at a rate less than or equal to 0.15 pounds per MMBtu heat input**, except that no new source and no opt-in source is eligible**. **[**For each budget source that is not a new budget source, the Department shall allocate**]** **The preliminary number of** allowances **shall be determined** in accordance with the following procedure:

(1) Calculate the average actual emission rate of the source for the control period of the current year (ER_{Actual}) in accordance with the following equation:

$$ER_{Actual} = \frac{EA}{HA}$$

Where:

EA = Actual emissions during the control period, expressed in pounds of NO_x; and

HA = Actual heat input during the control period, expressed in MMBtu;

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

(3) **[**Except as provided in (e)2iii below, if**]** **If** the average actual emission rate (ER_{Actual}) for the budget source as calculated in accordance with (e)2i(1) above is not greater than 0.20 pounds per MMBtu for industrial boilers or process heaters or 0.15 pounds per MMBtu for any other budget source, and if the actual emissions during the control period is greater than the number of allowances allocated to the source pursuant to (d)**[**5**]** **4**ii(1) or (d)**[**5**]** **4**iii above, then the Department shall **[**allocate**]** **determine the preliminary number of** allowances from the **New Source/**Growth Reserve to the budget source **to be allocated** in accordance with the following equation:

$$Allowances = E_{Actual} \quad A$$

Where:

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

A = The number of allowances **that had been** allocated to the source pursuant to (d)**[**5**]** **4**ii(1) or (d)**[**5**]** **4**iii above;

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

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

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

iii. If **[**there are not enough allowances in**]** **the sum of allowances preliminarily determined in accordance with (e)1 above to be allocated to sources from** the **New Source/** Growth Reserve **[**to allocate allowances to all of the eligible sources accordance with (e)2i above**]** **is greater than the number of allowances contained in the reserve**, then the Department shall **[**prorate the allocations to each source according to the amount of allowances each source would have otherwise received**]** **allocate all the allowances in the reserve, and each source shall receive a number of allowances equal to its prorated share determined** in accordance with the following equation:

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

Where:

A_{Source} = The number of allowances **preliminarily determined to be allocated to the source,** as determined in (e)**[**2i**]****1** above **[**for each source**]**;

A_{Total} = The total number of allowances **preliminarily determined to be allocated to all sources,** as determined in (e)**[**2i**]****1** above **[**for all of the eligible sources**]**; and

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

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

i. The Department shall **[**allocate allowances to meet claims which were**]** **preliminarily determine the number of allowances to be allocated to each claimant who** submitted to the Department by October **[**15**]** **30** of the current year **[**and**]** which **[**have**]** **has** been approved by the Department pursuant to N.J.A.C. 7:27-31.8 **. This number shall be determined** in accordance with the following equation:

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

Where:

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

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

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

ii. **[**The Department shall allocate allowances from the next year's base emission budget for New Jersey until all claims are met.**]** **If the sum of all allowances preliminarily determined to be allocated to claimants from the Incentive Reserve under (e)3i above is less than or equal to the number of allowances in the reserve, then the Department shall allocate to each claimant, the number of allowances preliminarily determined to be allocated to that claimant;**

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

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

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

Where:

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

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

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

4. If there are any allowances remaining in the New Source Reserve **[**or**]** / Growth Reserve **and/or the Incentive Reserve**, after allowances are allocated in accordance with (e)1**[**i and 2i**]** **through 3** above, the Department shall allocate the remaining allowances in accordance with the following procedure:

[i. The Department shall first compare the number of allowances that remain in the two reserves, with the difference between the following:

(1) The number of allowances preliminarily determined to be allocated in (d)4 above; and

(2) The number of allowances actually allocated to budget sources in (d)5 above;**]**

i. If there are allowances remaining in the Incentive Reserve after the allowances are allocated in accordance with (e)3 above, and if the number of allowances in the New Source/Growth Reserve were less than the total number of allowances preliminarily determined to be allocated under (e)1 above for the current year's control period, then the Department shall allocate allowances remaining in the Incentive Reserve to the sources being allocated allowances from the New Source/Growth Reserve. The number of allowances to be allocated to each source shall be proportional to the number that each source was underallocated, relative to the number of preliminarily determined allowances under (e)1, until the remaining allowances in the Incentive Reserve have all been allocated or until each source is no longer underallocated, whichever comes first. Any remaining allowances left in the Incentive Reserve after this procedure takes place shall be allocated pursuant to (e)4iii below.

ii. If there are allowances remaining in the New Source/Growth Reserve after the allowances are allocated in accordance with (e)2 above, and if the number of allowances in the Incentive Reserve were less that the total

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

[ii.**]** **iii.** **[**If, pursuant to (e)4i above, the number of allowances that remain in the two reserves is less than the difference, then the**]** **The** Department shall allocate **[**all of the**]** **any** allowances remaining in the two reserves **[**to each budget source in accordance with the following equation**]** **as follows** :

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

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

$$\text{Allowances} = \frac{A_R}{PA_{Total}} \times PA$$

Where:

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

PA = The number of allowances preliminarily determined **in the most recent allocation process** for allocation to the source in (d)**[**4**]** **3** above; and

PA_{Total} = The total number of allowances preliminary determined **in the most recent allocation process** for allocation to all budget sources in (d)**[**4**]** **3** above; and

[iii. If, pursuant to (e)4i above, the number of allowances that remain in the two reserves is equal to or greater than the difference, then the Department shall allocate the remaining allowances according to the following procedure:

(1) The Department shall allocate allowances to each budget source in accordance with the following equation:

$$\text{Allowances} = \frac{PA_{Total} \quad A5}{PA_{Total}} \times PA$$

Where:

A5 = The total number of allowances allocated to budget sources in (d)5 above;

PA = The number of allowances preliminarily determined for allocation to each source as determined in (d)4 above; and

PA_{Total} = The total number of allowances preliminarily determined for allocation to all sources in (d)4 above; and

(2) The Department shall transfer any allowances that still remain unallocated to the Department's attainment reserve account.**]**

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

(g) (No change.)

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

(i) (No change.)

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

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

(l) By September 30, 1999, the Department will allocate allowances fopr the control period of the year 2003 in accordance with the following table:

NATS UNIT ACCOUNT	*	COMPANY	PLANT	DESCRIPTION	ALLOWANCES
		NJDEP		Incentive Reserve	410
		NJDEP		Growth/New Source Reserve	820
2378000001		CONNECTIV	B.L. ENGLAND	BLE - UNIT #1	268
2378000002		CONNECTIV	B.L. ENGLAND	BLE - UNIT #2	340
2378000003		CONNECTIV	B.L. ENGLAND	BLE - UNIT #3	99
2379002001		CONNECTIV	CARLL'S CORNER STATION	CARLLS CORNER CT#1	5
2379003001		CONNECTIV	CARLL'S CORNER STATION	CARLLS CORNER CT#2	11
2380002001		CONNECTIV	CEDAR STATION	WEST GENERATOR ON CEDAR #1 TURBINE	1
2380003001		CONNECTIV	CEDAR STATION	EAST GENERATOR ON CEDAR #1 TURBINE	1
2380004001		CONNECTIV	CEDAR STATION	CEDAR #2 TURBINE	3
2382003001		CONNECTIV	MIDDLE ST	MIDDLE CT #1	3
2382004001		CONNECTIV	MIDDLE ST	MIDDLE CT #2	2
2382005001		CONNECTIV	MIDDLE ST	MIDDLE CT #3	4
2383010001		CONNECTIV	MISSOURI	MISSOURI AV. CT #B	2
2383011001		CONNECTIV	MISSOURI	MISSOURI AV. CT #C	2
2383012001		CONNECTIV	MISSOURI	MISSOURI AV. CT #D	2
2384000001		CONNECTIV	DEEPWATER	DW BOILER #1	37
2384000004		CONNECTIV	DEEPWATER	DW - BOILER #4	4
2384000006		CONNECTIV	DEEPWATER	B&W BOILER #6	1
2384000008		CONNECTIV	DEEPWATER	DW BOILER # 8	170
2384009001		CONNECTIV	DEEPWATER	DW CT A	5
2385000004		GPU	WERNER GE	Unit 4 (B & W Boiler)	2
2385009001		GPU	WERNER GE	Turbine (501AA) CT#1	7
2385010001		GPU	WERNER GE	Turbine (501AA) CT#2	7
2385011001		GPU	WERNER GE	Turbine (501AA) CT#3	7
2385012001		GPU	WERNER GE	Turbine (501AA) CT#4	6
2390000007		GPU	SAYREVILLE	Unit 7, Cyclone (#6 FUEL)	20
2390000008		GPU	SAYREVILLE	Unit 8, Cyclone (#6 FUEL)	26
2390012001		GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-4	12
2390014001		GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-3	8
2390015001		GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-2	8
2390016001		GPU	SAYREVILLE	Turbine (501AA) -OIL FIRED C-1	14
2393000003		GPU	GILBERT	Boiler 3	13
2393000004		GPU	GILBERT	C/C STAG 4 GT	52
2393000005		GPU	GILBERT	C/C STAG 5 GT	47
2393000006		GPU	GILBERT	C/C STAG 6 GT	50
2393000007		GPU	GILBERT	C/C STAG 7 GT	51
2393000009		GPU	GILBERT	CT 9	35
2393015001		GPU	GILBERT	C-1 GT (CT 251)	2
2393016001		GPU	GILBERT	C-2 GT (CT 251)	2

NATS UNIT ACCOUNT	*	COMPANY	PLANT	DESCRIPTION	ALLOWANCES
2393017001		GPU	GILBERT	C-3 GT (CT 251)	2
2393018001		GPU	GILBERT	C-4 GT (CT 251)	3
002397A01001		PSE&G	BAYONNE	UNIT NO. 1 (GAS TURBINE)	1
002397A02001		PSE&G	BAYONNE	UNIT NO. 2 (GAS TURBINE)	1
2398001101		PSE&G	BERGEN	UNIT NO. 1-1101 (GAS TURBINE)	39
2398001201		PSE&G	BERGEN	UNIT NO. 1-1201 (GAS TURBINE)	49
2398001301		PSE&G	BERGEN	UNIT NO. 1-1301 (GAS TURBINE)	38
2398001401		PSE&G	BERGEN	UNIT NO. 1-1401 (GAS TURBINE)	39
2398003001		PSE&G	BERGEN	UNIT NO. 3 (GAS TURBINE)	1
2399000101		PSE&G	BURLINGTON	UNIT NO. 10-1 (GAS TURBINE)	4
2399000102		PSE&G	BURLINGTON	UNIT NO. 10-2 (GAS TURBINE)	5
2399000103		PSE&G	BURLINGTON	UNIT NO. 10-3 (GAS TURBINE)	5
2399000104		PSE&G	BURLINGTON	UNIT NO. 10-4 (GAS TURBINE)	6
2399004001		PSE&G	BURLINGTON	UNIT NO. 8 (GAS TURBINE)	1
2399012001		PSE&G	BURLINGTON	UNIT NO. 9-1A&B (GAS TURBINE) NJ Stack IDs 12 and 13	3
2399014001		PSE&G	BURLINGTON	UNIT NO. 9-2A&B (GAS TURBINE) NJ Stack IDs 14 and 15	3
2399016001		PSE&G	BURLINGTON	UNIT NO. 9-3A&B (GAS TURBINE) NJ Stack IDs 16 and 17	3
2399018001		PSE&G	BURLINGTON	UNIT NO. 9-4A&B (GAS TURBINE) NJ Stack IDs 18 and 19	3
2399028001		PSE&G	BURLINGTON	UNIT NO. 11-1A&B (GAS TURBINE) NJ Stack IDs 28 and 29	2
2399030001		PSE&G	BURLINGTON	UNIT NO. 11-2A&B (GAS TURBINE) NJ Stack IDs 30 and 31	2
2399032001		PSE&G	BURLINGTON	UNIT NO. 11-3A&B (GAS TURBINE) NJ Stack IDs 32 and 33	2
2399034001		PSE&G	BURLINGTON	UNIT NO. 11-4A&B (GAS TURBINE) NJ Stack IDs 34 and 35	2
2400001001		PSE&G	EDISON	UNIT NO. 1-1A&B (GAS TURBINE) NJ Stack IDs 1 and 2	3
2400003001		PSE&G	EDISON	UNIT NO. 1-2A&B (GAS TURBINE) NJ Stack IDs 3 and 4	3
2400005001		PSE&G	EDISON	UNIT NO. 1-3A&B (GAS TURBINE) NJ Stack IDs 5 and 6	3
2400007001		PSE&G	EDISON	UNIT NO. 1-4A&B (GAS TURBINE) NJ Stack IDs 7 and 8	3
2400009001		PSE&G	EDISON	UNIT NO. 2-1A&B (GAS TURBINE) NJ Stack IDs 9 an 10	6
2400011001		PSE&G	EDISON	UNIT NO. 2-2A&B (GAS TURBINE) NJ Stack IDs 11 and 12	6
2400013001		PSE&G	EDISON	UNIT NO. 2-3A&B (GAS TURBINE) NJ Stack IDs 13 and 14	6
2400015001		PSE&G	EDISON	UNIT NO. 2-4A&B (GAS TURBINE) NJ Stack IDs 15 and 16	6
2400017001		PSE&G	EDISON	UNIT NO. 3-1A&B (GAS TURBINE) NJ Stack IDs 17 and 18	6
2400019001		PSE&G	EDISON	UNIT NO. 3-2A&B (GAS TURBINE) NJ Stack IDs 19 and 20	6
2400021001		PSE&G	EDISON	UNIT NO. 3-3A&B (GAS TURBINE) NJ Stack IDs 21 and 22	6
2400023001		PSE&G	EDISON	UNIT NO. 3-4A&B (GAS TURBINE) NJ Stack IDs 23 and 24	6
2401002001		PSE&G	ESSEX	UNIT NO. 10-1A&B (GAS TURBINE) NJ Stack IDs 2 and 3	6
2401004001		PSE&G	ESSEX	UNIT NO. 10-2A&B (GAS TURBINE) NJ Stack IDs 4 and 7	6
2401010001		PSE&G	ESSEX	UNIT NO. 10-3A&B (GAS TURBINE) NJ Stack IDs 10 and 11	6
2401012001		PSE&G	ESSEX	UNIT NO. 10-4A&B (GAS TURBINE) NJ Stack IDs 12 and 13	6
2401014001		PSE&G	ESSEX	UNIT NO. 11-1A&B (GAS TURBINE) NJ Stack IDs 14 and 15	5
2401016001		PSE&G	ESSEX	UNIT NO. 11-2A&B (GAS TURBINE) NJ Stack IDs 16 and 17	5

NATS UNIT ACCOUNT	*	COMPANY	PLANT	DESCRIPTION	ALLOWANCES
2401018001		PSE&G	ESSEX	UNIT NO. 11-3A&B (GAS TURBINE) NJ Stack IDs 18 and 19	5
2401020001		PSE&G	ESSEX	UNIT NO. 11-4A&B (GAS TURBINE) NJ Stack IDs 20 and 21	5
2401022001		PSE&G	ESSEX	UNIT NO. 12-1A&B (GAS TURBINE) NJ Stack IDs 22 and 23	10
2401024001		PSE&G	ESSEX	UNIT NO. 12-2A&B (GAS TURBINE) NJ Stack IDs 24 and 25	10
2401026001		PSE&G	ESSEX	UNIT NO. 12-3A&B (GAS TURBINE) NJ Stack IDs 26 and 27	10
2401028001		PSE&G	ESSEX	UNIT NO. 12-4A&B (GAS TURBINE) NJ Stack IDs 28 and 29	10
2401035001		PSE&G	ESSEX	UNIT NO. 9 (GAS TURBINE)	29
2403000001		PSE&G	HUDSON	UNIT NO. 1 (BOILER)	130
2403000002		PSE&G	HUDSON	UNIT NO. 2 (BOILER)	738
2403008001		PSE&G	HUDSON	UNIT NO. 3 (GAS TURBINE) Module 1,2,3,4 A+B Engines NJ Source IDs 1 through 8	3
2404000007		PSE&G	KEARNY	UNIT NO. 7 (BOILER)	23
2404000008		PSE&G	KEARNY	UNIT NO. 8 (BOILER)	8
2404005001		PSE&G	KEARNY	UNIT NO. 12-1A&B (GAS TURBINE) NJ Stack IDs 5 and 6	2
2404007001		PSE&G	KEARNY	UNIT NO. 12-2A&B (GAS TURBINE) NJ Stack IDs 7 and 8	2
2404009001		PSE&G	KEARNY	UNIT NO. 12-3A&B (GAS TURBINE) NJ Stack IDs 8 and 10	2
2404011001		PSE&G	KEARNY	UNIT NO. 12-4A&B (GAS TURBINE) NJ Stack IDs 11 and 12	2
2404015001		PSE&G	KEARNY	UNIT NO. 9 (GAS TURBINE)	2
2404016001		PSE&G	KEARNY	UNIT NO. 10 (GAS TURBINE) Module 1,2,3,4 A&B Engines NJ Source IDs 1 through 8	6
2404017001		PSE&G	KEARNY	UNIT NO. 11-(GAS TURBINE) Module 1,2,3,4 A&B Engines NJ Source IDs 1 through 8	11
2406000002		PSE&G	LINDEN	UNIT NO. 2-1 & 2-2 (BOILER)	27
2406000007		PSE&G	LINDEN	UNIT NO. 7 (GAS TURBINE)	14
2406000008		PSE&G	LINDEN	UNIT NO. 8 (GAS TURBINE)	16
2406000012		PSE&G	LINDEN	UNIT NO. 1-2 (BOILER)	5
2406000013		PSE&G	LINDEN	UNIT NO. 1-3 (BOILER)	8
2406007001		PSE&G	LINDEN	UNIT NO. 3 (GAS TURBINE)	2
2406008001		PSE&G	LINDEN	UNIT NO. 5 (GAS TURBINE)	2
2406009001		PSE&G	LINDEN	UNIT NO. 6 (GAS TURBINE)	2
2408000001		PSE&G	MERCER	UNIT NO. 1 (BOILER)	425
2408000002		PSE&G	MERCER	UNIT NO. 2 (BOILER)	485
2408007001		PSE&G	MERCER	UNIT NO. 3 (GAS TURBINE) Module 1,2,3,4 A&B Engines NJ Source IDs 1 through 8	1
2410002001		PSE&G	SALEM	UNIT NO. 3A&B (GAS TURBINE) NJ Stack IDs 2 and 3	3
2411000001		PSE&G	SEAWAREN	UNIT NO. 1 (BOILER)	27
2411000002		PSE&G	SEAWAREN	UNIT NO. 2 (BOILER)	25
2411000003		PSE&G	SEAWAREN	UNIT NO. 3 (BOILER)	33
2411000004		PSE&G	SEAWAREN	UNIT NO. 4 (BOILER)	56
2411012001		PSE&G	SEAWAREN	UNIT NO. 6 (GAS TURBINE) Module 1-4 A+B Engines NJ Stack IDs 12 through 19	1

NATS UNIT ACCOUNT	*	COMPANY	PLANT	DESCRIPTION	ALLOWANCES
2434005001		VINELAND MEU	HOWARD M	BOILER #9-COMBUSTION ENG. 180000 LB/HR 1	9
2434006001		VINELAND MEU	HOWARD M	COMBUSTION OF FOSSILE FUEL UTILIBOILER-E	26
5083004001		CONNECTIV	CUMBERLAND	CUMBERLAND - C.T. #1	8
6776002001		VINELAND MEU	WEST STAT	COMBUSTION TURBINE WESTINGHOUSE S/N17A-2	7
7138002001		GPU	FORKED RIVER	CT-1	12
7138003001		GPU	FORKED RIVER	CT-2	13
7288000001		CONNECTIV	SHERMAN AV STATION	SHERMAN - C.T. #1	25
8008001001		CONNECTIV	MICKELTON	MICKELTON CT	10
8227003001		GPU	GLEN GARDNER	A1 CT (JET TURBINE)	4
8227004001		GPU	GLEN GARDNER	A2 CT (JET TURBINE)	4
8227005001		GPU	GLEN GARDNER	A3 CT (JET TURBINE)	4
8227006001		GPU	GLEN GARDNER	A4 CT (JET TURBINE)	4
8227007001		GPU	GLEN GARDNER	B5 CT (JET TURBINE)	5
8227008001		GPU	GLEN GARDNER	B6 CT (JET TURBINE)	5
8227009001		GPU	GLEN GARDNER	B7 CT (JET TURBINE)	4
8227010001		GPU	GLEN GARDNER	B8 CT (JET TURBINE)	4
10043001001		US GENERATING - LOGAN	LOGAN GENERATING PLANT	PULVERIZED COAL FIRED	358
10099001001		CONNECTIV	PEDRICKTOWN COGEN	GENERAL ELECTRIC FRAME 7EA GAS TURBINE	26
10308001001		NORTH JERSEY ENERGY ASSOCIATES		CT-1 COMBUSTION TURBINE	167
10308001002		NORTH JERSEY ENERGY ASSOCIATES		CT-2 COMBUSTION TURBINE	172
10566001001		US GENERATING - CP	CARNEY'S POINT GENERATING PLANT	PC BOILER 2	203
10566002001		US GENERATING - CP	CARNEY'S POINT GENERATING PLANT	PC BOILER 1	204
10616001001		KAMINE/MILFORD	MILFORD	COMBUSTION TURBINE	91
10616001002		KAMINE/MILFORD	MILFORD	DUCT BURNER	4
10751002001		COGEN TECHNOLOGIES	CAMDEN	GENERAL ELECTRIC FRAME 7 EA.	66
10805002001		KENILWORTH/SITHE	EF KENILWORTH	GAS TURBINE NATURAL GAS	54
50006005001		COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.500 & DB	39
50006006001		COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.400 & DB	38
50006007001		COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.300 & DB	39
50006008001		COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.200 & DB	40
50006009001		COGEN TECHNOLOGIES	LINDEN	GT/HRSG NO.100 & DB	39
50385001001		NEWARK BAY COGEN	NEWARK BAY COGEN	GAS TURBINE GENERATOR WITH WASTEHEAT STE	21
50385002001		NEWARK BAY COGEN	NEWARK BAY COGEN	GAS TURBINE GENERATOR WITH WASTEHEAT STE	21
50497001001		COGEN TECHNOLOGIES	BAYONNE	GT/HRSG #1 EXHAUST STACK	26
50497002001		COGEN TECHNOLOGIES	BAYONNE	GT/HRSG NO.2 EXHAUST STACK	27
50497004001		COGEN TECHNOLOGIES	BAYONNE	GT/HRSG NO.3 EXHAUST STACK	26
50561001001		COASTAL EPCP	EAGLE POINT COGEN	CT A	161

NATS UNIT ACCOUNT	*	COMPANY	PLANT	DESCRIPTION	ALLOWANCES
50561001002		COASTAL EPCP	EAGLE POINT COGEN	DB A	21
50561002001		COASTAL EPCP	EAGLE POINT COGEN	CT B	161
50561002002		COASTAL EPCP	EAGLE POINT COGEN	DB B	21
50561086001		COASTAL Eagle Point	WESTVILLE REFINERY	ONE FW WATER WALL BOX BOILER	62
50561087001		COASTAL Eagle Point	WESTVILLE REFINERY	ONE FW WATER WALL BOX BOILER	67
50561088001	*	COASTAL Eagle Point	WESTVILLE REFINERY	PROCESS HEATER	36
50628748001		VALERO (MOBIL)	PAULSBORO	STEAM BOILER #1	36
50628749001		VALERO (MOBIL)	PAULSBORO	GAS TURBINE	67
50628749002		VALERO (MOBIL)	PAULSBORO	DUCT BURNER	44
50628751001		VALERO (MOBIL)	PAULSBORO	STEAM BOILER #2	35
50628752001		VALERO (MOBIL)	PAULSBORO	STEAM BOILER #	37
50797001001		CogenAmerica	NEWARK	COGEN	56
50799001001		CogenAmerica	PARLIN	40 MW GAS FIRED TURBINE #2	19
50799003001		CogenAmerica	PARLIN	40 MW GAS FIRED TURBINE #1	18
50852002001		PRIME ENERGY	ELMWOOD E	COGENERATION SYSTEM	106
54416189001		ROCHE VITAMINS	BELVIDERE	COGENERATION & DB	91
54640001001		CNG LAKEWOOD	CNG LAKEWOOD	GAS TURBINE GENERATOR #1	16
54640002001		CNG LAKEWOOD	CNG LAKEWOOD	GAS TURBINE GENERATOR #2	16
54807001001		CONNECTIV	VINELAND COGEN	GENERAL ELECTRIC LM6000 GAS TURBINE	7
880016010001	*	TOSCO (BAYWAY)		F701 - NO.7 ATMOSPHERIC PIPESTILL FURNACE	129
880016010003	*	TOSCO (BAYWAY)		F702 - NO.7 PIPESTILL OUTBOARD FLASHTOWER FURNACE	137
880016A03001	*	TOSCO (BAYWAY)		F251 - CAT PLANT FEED PREHEAT FURNACE	45
TOTAL					8200
* = considered a process heater in the calculation					

7:27-31.9 Permits

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

1. The requirement at N.J.A.C. 7:27-31.3(i) to have, by **[**December 31 of each year beginning in 1999**]** **the allowance transfer deadline**, a number of allowances in a budget source's compliance account which is at least equal, in emissions value, to the NO_x emissions of the source during the current year control period;

2. - 3. (No change.)

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

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

7:27-31.10 Allowance use, transfer and retirement

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

(c) At any time between the end of the reconciliation process and **[**December 31**]** **the allowance transfer deadline** during any year, an authorized account representative may authorize the transfer of one or more allowances from the represented account to another account. During the period between **[**January 1**]** **the day after the allowance transfer deadline** and the end of the reconciliation process, only allowances that are incapable of being used during such reconciliation process may be transferred. The only allowances that are effectively frozen during the reconciliation period are those allowances in compliance accounts that have serial numbers indicating that they could be used during the ongoing reconciliation process. Such a transaction is initiated by the submission of an allowance transfer request to the NATS Administrator in accordance with (d) below. Such transfers of allowances are voluntary actions on the part of authorized account representatives and reflect that:

1. - 2. (No change.)

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

1. - 2. (No change.)

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

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

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

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

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

2. **Each NOx allowance identified by serial number in the transfer request is in the transferror's account; and**

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

[(f) The transfer request is determined to be valid when the following has been verified by the NATS Administrator:

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

2. The person acquiring the allowances has an account in the NATS; and

3. The transfer request has been certified and submitted by the person named as AAR for the originating account.**]**

(f) **If a NOx allowance transfer request submitted to the NATS Administrator fails to meet the requirements of (d) above, the NATS Administrator will not record the transfer. Also, the NATS Administrator will not record a transfer until after the reconcilation process has been completed, if the NOx allowance transfer request is submitted on or after the NOx allowance transfer deadline and the request includes any NOx allowance**

which was allocated for the prior year's control period or for the control period for the current year (i.e., the control period to which the NOx allowance transfer deadline applies).

(g) (No change.)

(h) The NATS Administrator shall provide notification of the transfer **within five business days of its recording of the transfer** to the AAR of the originating account, to the AAR of the acquiring account, and to the Department. **Within 10 business days of receipt of a NOx allowance transfer request that fails to meet the requirements of (d) above, the NATS Administrator will notify the NOx authorized account representatives of both the originating and aqcuiring accounts of its decision not to record the transfer and the reasons for this decision.**

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

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

(l) (No change.)

7:27-31.11 Allowance Banking

(a) (No change.)

(b) Each year the NATS Administrator shall flag allowances that remain in an account as of the allowance transfer deadline **[**(that is, December 31)**]** as "banked" allowances.

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

1. - 2. (No change.)

(d) (No change.)

7:27-31.12 Early Reductions

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

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

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

i. (No change.)

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

iii. (No change.)

2. - 4. (No change.)

(f) - (p) (No change.)

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

(a) - (h) (No change.)

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

1. - 2. (No change.)

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

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

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

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

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

(l) - (n) (No change.)

(o) **Unless a specific certification statement is otherwise specified in this subchapter or unless a specific certification statement is otherwise pre-printed on a form issued by the NATS administrator, for any submission relating to compliance with this rule for the year 2003 and thereafter, the following certification from the AAR shall accompany the submission: "I am authorized to make this submission on behalf of the owners and operators of the NOx Budget sources or NOx Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for**

obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

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

(q) **The authorized account representative of a general account may instruct the NATS Administrator to close the account by submitting both a statement requesting deletion of the account from the NOx Allowance Tracking System and a correct nad complete allowance transfer request for the transfer of all allowances in the account to one or more other NOx Allowance Tracking System accounts.**

(r) **If a general account shows no activity for a period of a year or more and does not contain any allowances, the NATS Administrator may notify the authorized account representative for the account that the account will be closed and deleted from the NOx Allowance Tracking System following 20 business days after the notice is sent. The NATS Administrator will close the account after the 20-day period unless before the end of the 20-day period the NATS Administrator receives a correct and complete allowance transfer request for transfer of allowances into the account or a statement submitted by the authorized account representative demonstrating to the satisfaction of the NATS Administrator good cause as to why the account should not be closed.**

7:27-31.14 Emissions monitoring

(a) **[**The**]** **For the years 1999 through 2002, the** owner or operator of each budget source shall monitor the NO_x emissions from each budget source as specified by this section, by the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program," the "Electronic Data Reporting: Acid Rain Program/NO_x Budget Program -- Version 2.0," and the "NO_x Budget Program Monitoring Certification and Reporting Instructions." **For the years 2003 and beyond, the owner or operator of each budget source shall monitor the NOx emissions from each budget source as specified in (i) below and by 40 CFR Part 75.**

(b) - (d) (No change.)

(e) **[**The**]** **For the years 1999 through 2002, the** owner or operator shall perform initial testing and periodic calibration, accuracy testing and quality assurance/quality control testing of all monitoring systems for each budget source as specified in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(f) During a period when valid data is not being recorded by monitoring devices approved for use to demonstrate compliance with this subchapter, missing or invalid data shall be replaced with representative data in accordance with the missing data provisions of 40 C.F.R. Part 75 and **, for the years 1999 through 2002,** the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(g) Not withstanding (f) above, during the period from when monitoring systems are required to be installed and operated through the earlier of the provisional certification date of the monitors and April 30, 1999, data regarding the source shall be reported, and the owner or operator shall provide an assessment, based on sound engineering judgement, as to whether the data meets the quality assurance tests in the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" and is representative of actual data based on sound engineering judgement. During any other periods when the source is operating or if the data does not meet existing state quality assurance requirements, invalid data shall be replaced with representative data in accordance with the missing data provisions of 40 C.F.R. Part 75 and **, for the years 1999 through 2002,** the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program."

(h) **[**As**]Only for monitoring to take place during the years 1999 through 2002, as** part of the monitoring plan submittal to the Department, the owner or operator of a budget source may petition the Department to use an alternative monitoring method to what is otherwise specifically applicable and specifically prescribed to a particular unit as indicated in the "Guidance for Implementation of Emission Monitoring Requirements for the NOx Budget Program." If the Department determines that the accuracy or reliability of a method is not comparable to other approved methods, the Department may disallowed the use of such method or may require the use of corrective factors to be included in the method. The Department shall not approve an alternative method for determining NOx emission rate if the source has installed or is required to install and operate a NOx CEMS. The Department will provide an opportunity for review by USEPA and other State environmental agencies before approving any alternative monitoring methods. The Department shall submit any approved monitoring plans containing alternative methods to the USEPA.

(i) Subsections (j) through (aa) generally apply to the monitoring and reporting of NOx emissions from budget sources during the 2003 control period and thereafter.

(j) Requirements for installation, certification of monitoring systems, and data accounting: the owner or operator of each budget source must meet the following requirements (these provisions also apply to a source for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, as provided at N.J.A.C. 7:27-31.4):

1. Install all monitoring systems required under this section for monitoring NOx mass. This includes all systems required to monitor NOx emission rate, NOx concentration, heat input, and flow, in accordance with (r), (s), and (aa) below;

2. Install all monitoring systems for monitoring heat input;

3. Successfully complete all certification tests required pursuant to (n) through (q) below and meet all other provisions of this section and 40 CFR 75 applicable to the monitoring systems under (j)1 and 2 above; and

4. Record, and report data from the monitoring systems under paragraphs (j)1 and 2 above.

(k) Compliance dates: the owner or operator must meet the requirements of paragraphs (j)1 through 3 above on or before the following dates and must record and report data on and after the following dates:

1. Budget sources that commence operation before January 1, 2002, must comply with the requirements of this section by May 1, 2002.

2. Budget sources that commence operation on or after January 1, 2002 and that report on an annual basis under (x) below must comply with the requirements of this section by the later of the following dates:

i. May 1, 2002; or

ii. The earlier of:

(1) 180 days after the date on which the source commences operation; or

(2) For any source that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MW and sells any amount of electricity, 90 days after the date on which the source commences commercial operation.

3. Budget sources that commence operation on or after January 1, 2002 and that report on a control season basis under (x) must comply with the requirements of this section by the later of the following dates:

i. The earlier of:

(1) 180 days after the date on which the source commences operation; or

(2) For any source that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MW and sells any amount of electricity, 90 days after the date on which the source commences commercial operation.

ii. However, if the applicable deadline under (k)3i above does not occur during a control period, May 1 immediately following the date determined in accordance with paragraph (k)3i above.

4. For a budget source with a new stack or flue for which construction is completed after the applicable deadline under paragraph (k)1, 2 or 3 above or N.J.A.C. 7:27-31.4:

i. 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

ii. However, if the source reports on a control season basis under (x) below and the applicable deadline under (k)4i of this section does not occur during the control period, May 1 immediately following the applicable deadline in paragraph (k)4i above.

5. For a source for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified N.J.A.C. 7:27-31.4

(l) Reporting data prior to initial certification: the owner or operator of a budget source under paragraphs (k)3 or (k)4 above must determine, record and report NOx mass, heat input and any other values required to determine NOx mass (e.g. NOx emission rate and heat input or NOx concentration and stack flow) using the provisions of 40 CFR 75.70(g), from the date and hour that the source starts operating until all required certification tests are successfully completed.

(m) Prohibitions:

1. No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with (y) and (z) below.

2. No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall operate the source so as to discharge, or allow to be discharged, NOx emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section and 40 CFR 75, except as provided for in 40 CFR 75.74.

3. No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NOx mass emissions discharged into the atmosphere, except for periods of recertification or periods

when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section and 40 CFR 75 of this chapter except as provided for in 40 CFR 75.74.

4. No owner or operator of a budget source or a non-budget source monitored under 40 CFR 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this section, except under any one of the following circumstances:

i. During the period that the source is covered by a retired source exemption that is in effect;

ii. The owner or operator is monitoring emissions from the source with another certified monitoring system approved, in accordance with the applicable provisions of this section and 40 CFR 75, by the Department for use at that source that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

iii. The authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with (o)2 below.

(n) The owner or operator of a budget source that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:

1. If, prior to January 1, 1998, the NETS Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NOx emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the authorized account representative shall resubmit the petition to the NETS Administrator under 40 CFR 96.75(a) to determine if the approval applies under the NOx Budget Program.

2. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any NOx concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (b) of this section.

(o) The owner or operator of a budget source that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a source that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of (p) below and the owner or operator of a source that qualifies to use an alternative monitoring system under subpart E of 40 CFR 75 shall also meet the

requirements of (q) below. The owner or operator of a budget source that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NOx concentration CEMS under 40 CFR 75.71(a)(2) of this chapter also shall comply with the following initial certification and recertification procedures.

1. Requirements for initial certification: the owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in 40 CFR 96.70(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this subchapter in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

2. Requirements for recertification: whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the NETS Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B of 40 CFR 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the source's operation that the NETS Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include, but are not limited to: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

3. Certification approval process for initial certifications and recertification:

i. Notification of certification: the authorized account representative shall submit to the Department and the USEPA Regional Office a written notice of the dates of certification in accordance with (t) below.

ii. Certification application: the authorized account representative shall submit to the Department a certification application for each monitoring system required under subpart H of 40 CFR 75. a complete certification application shall include the information specified in subpart H of 40 CFR 75.

iii. Except for sources using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall

be determined using the procedures set forth in 40 CFR 75.20(a)(3) . a provisionally certified monitor may be used under the NOx Budget Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under paragraph (o)3ii above. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.

iv. Certification application formal approval process: the Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under (o)3ii above. In the event the Department does not issue such a notice within such 120-day period, each monitoring system included in the certification application as having met the applicable performance requirements of 40 CFR 75 will be deemed certified for use under the NOx Budget Program.

(1) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.

(2) Incomplete application notice. a certification application will be considered complete when all of the applicable information required to be submitted under(o)3ii above has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the authorized account representative must submit the additional information required to complete the certification application. If the authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under (o)3iv(3) below.

(3) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this subchapter, or if the certification application is incomplete and the requirement for disapproval under paragraph (o)3iv(2) above has been met, the Department will issue a written notice of disapproval of the

certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in (o)3v below for each monitoring system or component thereof which is disapproved for initial certification.

(4) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with (s) below.

v. Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (o)3iv(4) above, then:

(1) The owner or operator shall substitute the following values, for each hour of source operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):

(a) For sources using or intending to monitor for NOx emission rate and heat input or for sources using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NOx emission rate and the maximum potential hourly heat input of the source.

(B) For sources intending to monitor for NOx mass emissions using a NOx pollutant concentration monitor and a flow monitor, the maximum potential concentration of NOx and the maximum potential flow rate of the source under section 2.1 of Appendix a of 40 CFR 75;

(2) The authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (o)3i and ii above; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 source operating days after the date of issuance of the notice of disapproval.

(p) Initial certification and recertification procedures for low mass emission sources using the excepted methodologies under 40 CFR 75.19 . The owner or operator of a gas-fired or oil-fired source using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of (n) through (q), except that the excepted methodology shall be deemed provisionally certified for use under the NOx Budget Program, as of the following dates:

1. For sources that are reporting on an annual basis under (x) below:

i. For a source that has commences operation before its compliance deadline under (o) above, from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review; or

ii. For a source that commences operation after its compliance deadline under (o) above, the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for Department review, or

2. For sources that are reporting on a control period basis under (x)3ii below:

i. For a source that commenced operation before its compliance deadline under (o) above, where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review; or

ii. For a source that commenced operation before its compliance deadline under (o) above, where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department review; or

3. For a source that commences operation after its compliance deadline under (o) above, where the source commences operation before May 1, from May 1 of the year that the source commenced operation, until the completion of the period for the Department's review.

4. For a source that has not operated after its compliance deadline under (o) above, where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for

approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the Department's review.

(q) Certification/recertification procedures for alternative monitoring systems. The authorized account representative representing the owner or operator of each source applying to monitor using an alternative monitoring system approved by the NETS Administrator and, if applicable, the Department under subpart E of 40 CFR 75 shall apply for certification to the Department prior to use of the system under the NOx Budget Program. The authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in (o) above. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in (o)3 above and 40 CFR 75.20(f).

(r) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of 40 CFR 75, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of 40 CFR 75 .

(s) Audit decertification. Whenever an audit of a monitoring system and/or a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because or is presently not certifiable because it did not or does not currently meet a particular performance specification or other requirement under (n) through (q) above or the applicable provisions of 40 CFR 75, either at the time of the initial certification or recertification application submission or at the time of the audit, the Department will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the NETS Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in 40 CFR 96.71 for each disapproved system.

(t) The authorized account representative for a budget source shall submit written notice to the Department and the NETS Administrator in accordance with 40 CFR 75.61, except that if the source is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Department.

(u) General Recordkeeping and reporting provisions

1. The authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements N.J.A.C. 7:27-31.13(o).

2. If the authorized account representative for a budget source subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR 75 and which includes data and information required under this section or subpart H of 40 CFR 75 is not the same person as the designated representative or the alternative designated representative for the source under part 72, the submission must also be signed by the designated representative or the alternative designated representative.

(v) Monitoring Plans.

1. The owner or operator of a source subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR 75 .

2. The owner or operator of a source that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR 75.

(w) Certification Applications. The authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under 40 CFR 96.71 including the information required under subpart H of 40 CFR 75 .

(x) Quarterly reports. The authorized account representative shall submit quarterly reports, as follows:

1. If a source is subject to an Acid Rain emission limitation or if the owner or operator of the budget source chooses to meet the annual reporting requirements of section, the authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

i. For sources commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under (k)1 above, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii above or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or

ii. For a source that commences operation after May 1, 2002, the calendar quarter in which the source commences operation, data shall be reported from the date and hour corresponding to when the source commenced operation.

2. If a budget source is not subject to an Acid Rain emission limitation, then the authorized account representative shall either:

i. Meet all of the requirements of 40 CFR 75 related to monitoring and reporting NOx mass emissions during the entire year and meet the reporting deadlines specified in paragraph (x)1 above; or

ii. Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b) . The authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(1) For sources commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under (k)1 above, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii. or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; or

(2) For sources that commence operation after May 1, 2002 during the control period, the calendar quarter in which the source commences operation. Data shall be reported from the date and hour corresponding to when the source commenced operation; or

(3) For sources that commence operation after May 1, 2002 and before May 1 of the year in which the source commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii or, if the certification tests are not completed by May 1 of the year in which the source commences operation, May 1 of the year in which the source commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the source commences operation.

(4) For sources that commence operation after May 1, 2002 and after September 30 of the year in which the source commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under (o)3iii or, if the certification tests are not completed by May 1 of the year after the source commences operation, May 1 of the year after the source commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the source commences operation.

3. The authorized account representative shall submit each quarterly report to the NETS Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR 75 and 40 CFR 75.64.

i. For sources subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR 75 for each budget source (or group of sources using a common stack) as well as information required in subpart G of 40 CFR 75.

ii. For sources not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR 75 for each budget source (or group of sources using a common stack).

4. Compliance certification. The authorized account representative shall submit to the NETS Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the source's emissions are correctly and fully monitored. The certification shall state that:

i. The monitoring data submitted were recorded in accordance with the applicable requirements of this section and 40 CFR 75, including the quality assurance procedures and specifications; and

ii. For a source with add-on NOx emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NOx emissions; and

iii. For a source that is reporting on a control period basis under (x) above the NOx emission rate and NOx concentration values substituted for missing data under subpart D of 40 CFR 75 are calculated using only

values from a control period and do not systematically underestimate NOx emissions.

(y) The authorized account representative of a budget source that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the NETS Administrator requesting approval to apply an alternative to any requirement of this section.

1. Application of an alternative to any requirement of this section is in accordance with this section only to the extent that the petition is approved by the NETS Administrator, in consultation with the Department.

2. Notwithstanding (y)1 above, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by (z) below.

(z) The authorized account representative of a budget source that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Department and the NETS Administrator requesting approval to apply an alternative to any requirement of this section.

1. The authorized account representative of a budget source that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR 75.66 to the Department and the NETS Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NOx concentration CEMS used under 40 CFR 75.71(a)(2).

2. Application of an alternative to any requirement of this section is in accordance with this section only to the extent the petition under this subsection is approved by both the Department and the NETS Administrator.

(aa) The owner or operator of a source that elects to monitor and report NOx Mass emissions using a NOx concentration system and a flow system shall also monitor and report heat input at the source level using the procedures set forth in 40 CFR 75.

7:27-31.16 Reporting

(a) - (c) (No change.)

(d) In order for the Department to obtain data necessary for the allocation of allowances pursuant to N.J.A.C. 7:27-31.7, in the quarterly EDR submissions to the NETS for each third calendar quarter, the AAR for a budget source shall submit the following information for each budget source regardless as to whether the "Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program" specifies the reporting of the information:

1. The total heat input, expressed in MMBtu, to the source during the control period if the hourly heat input to the source is not reported in the EDR; **and**

[2. - 5. (Reserved.)**]**

2. Commencing in the EDR for the third quarter 2000, and each third quarter EDR submission thereafter, the total net electric output and the total net useful steam output for the control period.

7:27-31.17 End-of-season reconciliation

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

(e) Each year during the period November 1 through **[**December 31**]** **the allowance transfer deadline**, inclusive, the authorized account representative may request the NATS Administrator to deduct allowances from the compliance account during the reconciliation process for that year's control period in a specific order. This request shall be submitted by the AAR to the NATS Administrator by no sooner than November 1 and no later than the allowance transfer deadline **[**(December 31)**]**. In the request, the AAR shall identify the account number of the compliance account from which the deductions shall be made and the serial numbers of the allowances to be deducted in order of deduction.

(f) - (i) (No change.)

(j) In the case of more than one budget source sharing a common stack and having emissions that are not separately monitored or apportioned:

1. The authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of NOx emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with N.J.A.C. 7:27-31.18; and

2. The NATS Administrator will deduct NOx allowances for each such budget source until the number of allowances deducted equals the source's identified percentage of the number of tons of NOx emissions from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

7:27-31.18 Compliance certification

(a) (No change.)

(b) The compliance certification shall be submitted no later than the allowance transfer deadline **[**(December 31)**]** of each year to the following address:

ATTN: NOX BUDGET COMPLIANCE CERTIFICATION
New Jersey Department of Environmental Protection
Office of Air Quality Management
401 East State Street -- P.O. Box 418
Trenton, NJ 08625-0418

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

(e) The Department may review and conduct independent audits concerning any compliance certification submitted pursuant to this section or any other submission under the NOx Budget Program and make appropriate adjustments of the information in the compliance certifications or other submissions. The NATS Administrator shall deduct NOx allowances from or transfer NOx allowances to a unit's compliance account based on the information in the compliance certifications or other submissions, as adjusted by the Department pursuant to this subsection.

7:27-31.22 Compliance Supplement Pool

(a) As authorized under the USEPA SIP Call at 40 CFR 51.121, New Jersey's compliance supplement pool is 1,479 allowances. Such allowances are only valid to be used to authorize the NOx emissions of a budget source during the control periods of the years 2003 and 2004.

(b) The Department shall allocate the compliance supplement pool by May 1, 2003 in accordance with the following:

1. The Department shall determine the number of banked allowances held in New Jersey compliance accounts as of April 1, 2003;

2. If the total number of allowances determined in 1 above is less than or equal to 1,479, then:

i. The Department shall allocate one allowance from the compliance supplement pool to each compliance account for each banked allowance; and

ii. The Department shall allocate any allowances remaining in the compliance supplement pool in accordance with 4 below;

3. If the total number of banked allowances determined in 1 above is greater than 1,479, then the Department shall allocate allowances from the compliance

supplement pool to each compliance account in accordance with the following equation:

$$\text{Allowances} = \frac{1{,}479}{A_{Total}} \times A$$

Where:

1,479 = The total number of allowances in the compliance supplement pool;

A = The number of allowances in each compliance account; and

A_{Total} = The total number of banked allowances in all New Jersey compliance accounts; and

4. After allocating allowances pursuant to 2i above, the Department shall allocate any remaining allowances to the owner or operator of each budget source that has been approved to receive compliance supplement pool allowances as specified in 6 and 7 below. If there are not enough allowances to satisfy thses approvals in full, then the Department shall allocate all the remaining allowances, and each owner or operator shall receive a number of allowances equal to its prorated share of the remaining allowances;

5. If there still are allowances remaining in the compliance supplement pool after allocating allowances pursuant to 4 above, then the Department shall retite any allowances remaining in the compliance supplement pool.

6. By November 30, 2001, the owner or operator of a budget source may submit to the Department a request to receive allowances from the compliance supplement pool by demonstrating all of the following:

i. For a source used to generate electricity, compliance with this subchapter for the 2003 control period by May 1, 2003 would create undue risk for the reliability of the electricity supply. This demonstration must include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of the control technologies necessary to comply with this subchapter;

ii. For a source not used to generate electricity, compliance with this subchapter for the 2003 control period by May 1, 2003 would create

undue risk for the source or its associated industry to a degree that is comparable to the risk described in (b)6i above;

iii. It would not be possible for the source to comply with this subchapter by generating early reduction allowances or acquiring early reduction allowances from other sources;

iv. It would not be possible to comply with this subchapter by acquiring sufficient allowances from other persons who hold allowances; and

v. The owner or operator has made a written commitment to the Department to install advanced NOx control systems or to repower, either of which is designed to achieve a 90 percent NOx emission rate reduction;

7. The Department shall review all requests made pursuant to 6 above, and shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of the allocating compliance supplement pool allowances to the requests interimly approved by the Department before allocating the allowances pursuant to 4 above.

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) - (l) (No change.)

(m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for he requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have on legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. - 30. (No change.)

31. The violations of N.J.A.C. 7:27-31, and the civil administrative penalty amounts for each violation, are as set forth **[**in the following table**]** **as follows**:

i. The penalty amounts for violation of N.J.A.C. 7:27-31.3(i), which requires a minimum number of allowances to be held in a budget source's compliance account as of the allowance transfer deadline, are set forth in the following table, directly dependent on the number of tons of shortfall (each ton of excess emissions is a separate violation):

Amount of Shortfall	**Civil Administrative Penalty Amounts (per ton)**
1 - 10	
11 - 20	**$4,000**
	$10,000
51 - 100	**$30,000**
over 100	**$50,000**

ii. The base penalty amount as calculated in i. above shall be limited by the statutory maximum penalty calculated as follows:

(1) For first offense levels (see N.J.A.C. 7:27A-3.5(f) for an explanation of determining offense levels) the penalty shall not exceed $10,000 per day for each day of violation within the control period ($10,000 per day × 153 days = $1,530,000);

(2) For second offense levels (see N.J.A.C. 7:27A-3.5(f) for an explanation of determining offense levels) the penalty shall not exceed $25,000 per day for each day of violation within the control period ($25,000 per day × 153 days = $3,825,000);

(3) For third and subsequent offense levels (see N.J.A.C. 7:27A-3.5(f) for an explanation of determining offense levels) the penalty shall not exceed $50,000 per day for each day of violation within the control period ($50,000 per day × 153 days = $7,650,000); and

(4) If the authorized account representative of the budget source can prove that the number of days of violation in the control period is less than 153 days, then the maximum penalty as calculated in (1) - (3) above shall be adjusted accordingly; and

iii. The violations of other provisions at N.J.A.C. 7:27-31, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
[N.J.A.C. 7:27-31.3(i)**]**	**[**Hold Allowances[7]**]**	**[**(Reserved.)**]**	**[**(Reserved.)**]**	**[**(Reserved.)**]**	**[**(Reserved.)**]**

. . .

(No change.)

Based ultation with staff, I hereby certify that the above statements, including the Federal Order 27 (1994) and the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., permit the public purposes and expected consequences of this proposal. I hereby authorize the proposal.

July 2, 1999

Date

Department of Environmental Protection