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## **ENVIRONMENTAL PROTECTION**

### **ENVIRONMENTAL REGULATION**

#### **Air Quality Management**

##### **Clean Air Interstate Rule (CAIR) NO<sub>x</sub> Trading Program**

**Adopted Amendment:** N.J.A.C. 7:27A-3.10

**Adopted New Rules:** N.J.A.C. 7:27-30 and 7:27-31.23

**Proposed:** February 5, 2007 as 39 NJR 300(a).

**Adopted:** June 19, 2007 by Lisa P. Jackson, Commissioner, Department of Environmental Protection.

**Filed:** June 21, 2007, with changes not requiring additional public notice and comment (See N.J.A.C. 1:30-6.3).

**Authority:** N.J.S.A. 13:1B-3(e), 13:1D-9, and 26:2C-1 et seq.

**DEP Docket Number:** 02-07-01/540

**Effective Date:**

**Operative Date:**

**Expiration Date:** Exempt N.J.A.C. 7:27; April 21, 2010, N.J.A.C. 7:27A

The Department of Environmental Protection (Department) is adopting new rules and amendments regarding the CAIR NO<sub>x</sub> Trading Program. The Federal Clean Air Interstate Rule (CAIR) program, as established in the Federal rules (40 CFR Part 97), is designed to reduce emissions of NO<sub>x</sub> and SO<sub>2</sub> in the eastern half of the United States. 40 CFR Part 97 prescribes the participation by New Jersey's large stationary combustion units in the Federal CAIR cap and trade programs. The annual and ozone season oxides of nitrogen (NO<sub>x</sub>) control periods begin in

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2009, and the annual sulfur dioxide (SO<sub>2</sub>) control period begins in 2010. The new rules at N.J.A.C. 7:27-30, as allowed by the Federal rules, allocate the NO<sub>x</sub> allowances differently than the default method contained in the Federal rules, but do not modify the Federal program regarding SO<sub>2</sub>. The adopted rules satisfy the Federal requirements for an abbreviated State Implementation Plan (SIP) for CAIR (40 CFR Part 97 Subpart EE and Subpart EEEE) and constitute a revision to New Jersey's SIP, in accordance with Section 110(a)(2)(D)(i)(I) of the Federal Clean Air Act, 42 U.S.C. §7410, commonly referred to as the Transport SIP.

The Department is also adopting N.J.A.C. 7:27-31.23 to provide the date when the CAIR NO<sub>x</sub> Trading Program (State CAIR Program) will replace the existing NO<sub>x</sub> Budget Program. Because the State CAIR Program will replace the State's NO<sub>x</sub> Budget Program beginning with the 2009 control period, it is necessary for the Department to establish this transition date for the NO<sub>x</sub> Budget Program to prevent an overlap of ozone season cap and trade programs for NO<sub>x</sub>.

**Summary** of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on March 28, 2007, at its headquarters at 401 East State Street, Public Hearing Room, First Floor, East Wing, Trenton, New Jersey, to provide interested parties the opportunity to present comments on the proposal and the proposed SIP revision. William O'Sullivan, PE, Director of the Department's Division of Air Quality, served as the Hearing Officer. After reviewing the comments received by the Department, the Hearing Officer has recommended that the proposed new rules and amendments be adopted with the changes described below in the Summary of Public Comments and Agency Responses. The Department accepts the Hearing Officer's recommendations.

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A record of the public hearing is available for inspection in accordance with applicable law by

contacting:

Department of Environmental Protection  
Office of Legal Affairs  
Attn: Docket No. 02-07-01/540  
401 East State Street  
P.O. Box 402  
Trenton, NJ 08625-0402

This adoption document can also be viewed or downloaded from the Department's website at [www.nj.gov/dep](http://www.nj.gov/dep).

**Summary** of Public Comments and Agency Responses:

The following people submitted comments on the proposal:

1. Mark Casper                      Cogentrix Energy, Inc.
2. Daniel Cunningham            PSE&G
3. Steven Gabel                    The Independent Energy Producers of New Jersey
4. Jason M. Goodwin                Calpine
5. Gary Helm                        Conectiv Energy
6. Debra Jacobson                  George Washington University Law School
7. Richard Ruvo                    United States Environmental Protection Agency – Region 2
8. Andrew Tynan                    DSM Nutritional Products, Inc.

The comments and agency responses are summarized below. The number(s) in parentheses after each comment correspond to the number identifying the commenter(s) above.

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1. COMMENT: The Department's rules should address CAIR SO<sub>2</sub> allowances for

cogeneration facilities. If it cannot change the Federal SO<sub>2</sub> allocation, the Department should exempt cogeneration units from the CAIR NO<sub>x</sub> Trading Program or adjust the NO<sub>x</sub> allocation to provide the cogeneration units extra NO<sub>x</sub> allowances in place of the SO<sub>2</sub> allowances they will not get from the Acid Rain Program. (1)

RESPONSE: These rules allocate the NO<sub>x</sub> allowances differently than the USEPA does. Under the CAIR Federal implementation plan (FIP), states are allowed to allocate NO<sub>x</sub> allowances differently, allocate the compliance supplement pool differently, include units other than electric generating units (EGUs), and include an opt-in provision. The CAIR FIP does not allow states to change the CAIR SO<sub>2</sub> allocation.

The Department cannot exempt a cogeneration unit or any other unit from the program, if that unit meets the requirements of the Federal CAIR rule. Moreover, it is not feasible for the Department to provide cogeneration units extra NO<sub>x</sub> allowances in place of the SO<sub>2</sub> allowances they will not get from the Acid Rain Program. The CAIR NO<sub>x</sub> allocations are administered separately from the CAIR SO<sub>2</sub> allocation. Because the price of allowances will be established in a marketplace, the Department cannot predict how many NO<sub>x</sub> allowances will equal the value of an SO<sub>2</sub> allowance.

As discussed in the proposal summary (39 N.J.R. at 301), the Federal rules allow a State to adopt an abbreviated SIP that modifies up to four elements of the Federal CAIR program. (See 40 CFR Part 91.) None of the four elements includes removing cogeneration or other facilities from the CAIR program. The authority to specify what types of facilities

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are included in the CAIR program or the Federal Acid Rain program remains with the USEPA, and any changes would have to be made on a Federal level.

2. COMMENT: The rules should use gross output data instead of net output data. Under rules that rely on net output data instead of gross output data, units that operate pollution control equipment lose a small portion of their energy output to run the pollution control equipment.  
(1, 2)

RESPONSE: The Department acknowledges that pollution control equipment requires additional power to operate. The use of net output data to allocate NO<sub>x</sub> allowances does not penalize units that have pollution control equipment. As adopted, the equations that the Department uses to calculate the allocation provide more allowances for units with NO<sub>x</sub> emission rates less than 0.15 lbs/mmBtu for 2009 through 2014. In 2015 and thereafter, the equations allocate more allowances to units with NO<sub>x</sub> emission rates less than 0.125 lbs/mmBtu. The allocation method promotes clean energy generation, which is the Department's goal in adopting these rules.

The use of net output data also encourages the efficient operation of the control equipment. For sources that emit more than 0.15 lbs/mmBtu for 2009 through 2014 (or more than 0.125 lbs/mmBtu in 2015 and thereafter), the use of net output data will result in fewer allowances than the use of gross output data. This provides the incentive for these "dirtier" units to operate existing pollution control equipment in the most efficient manner, and to consider additional control technology to further decrease emissions. The use of net output

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data is currently part of the NO<sub>x</sub> Budget Program allocation, and the Department has determined to continue with this approach.

The Department held two meetings in July of 2006 with the regulated community, environmental organizations, and the USEPA to discuss what issues the Department should consider for this rulemaking. This topic of gross output data versus net output data was discussed, but the regulated community did not provide data to justify a change from net output allocation.

3. COMMENT: The Department should not withhold the allocation of the compliance supplement pool. (2)

RESPONSE: The Department is not allocating the compliance supplement pool because the additional pool of allowances would result in an increase to the State NO<sub>x</sub> budget, even though it is only for one year. As discussed in the proposal summary (see 39 N.J.R. at 304), the USEPA provides the compliance supplement pool as either a reward for early compliance, or as a bridge to help states ensure reliability of electricity supply. The Department has determined, based on its past experience, that this pool is not necessary in New Jersey for either purpose (see Summary, 39 N.J.R. at 301, 304).

In 2003, there was a compliance supplement pool in the NO<sub>x</sub> Budget Program. The Department observed that there were some early reductions during the years prior to 2003, but the Department believes that most of these reductions were due to the significant drop in the State NO<sub>x</sub> budget, from 17,340 prior to 2003 to 8,200 in 2003. The Department does not

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anticipate that there would be significant early emissions reduction if it allocated the compliance supplement pool.

The Department does not anticipate that there will be electricity system reliability issues as a result of the adopted rules, inasmuch as New Jersey's State budget for the annual NO<sub>x</sub> program is only 0.8 percent of the entire CAIR budget. In view of the size of the CAIR budgets of other states, should New Jersey sources require additional NO<sub>x</sub> allowances, the allowances will be available for purchase from the national NO<sub>x</sub> emissions trading market. (See 39 N.J.R. at 304.)

4. COMMENT: The commenter supports the allocation mechanisms in the proposal that are responsive to evolving energy markets. These mechanisms include the use of the most recent data available for allocation, use of common baseline and entry point, fuel-neutral allocation mechanisms, output based allocation, the New Source/Growth Reserve, and the treatment of useful heat output from combined heat and power facilities. (4)
5. COMMENT: The commenter supports the Incentive Reserve. (6)

RESPONSE TO COMMENTS 4 AND 5: The Department acknowledges the commenters' support for the rules.

6. COMMENT: It is not appropriate to set aside allowances for the Incentive Reserve. (2)

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7. COMMENT: The ability for the Board of Public Utilities (BPU) to claim allowances in the Incentive Reserve for its Clean Energy Program should only be allowed if the market participants do not submit separate applications for incentive allowances. (2, 3)

RESPONSE TO COMMENTS 6 AND 7: The intent of the Incentive Reserve is to promote energy efficiency and renewable energy (EE/RE). This reserve exists in the NO<sub>x</sub> Budget program and is included in these new rules. The Incentive Reserve was proposed at the same level, five percent, as was included in the NO<sub>x</sub> Budget Program. The only change that the CAIR NO<sub>x</sub> Trading Program rules make in the implementation of the Incentive Reserve from the NO<sub>x</sub> Budget Program is the inclusion of BPU's Clean Energy Program. This specifically allows BPU to aggregate all of the projects in the Clean Energy Program to claim incentive allowances for retirement for the benefit of the environment. These projects may otherwise be too small to claim an incentive allowance individually.

As stated in the proposal summary (see 39 N.J.R. at 304), the use of Incentive Reserve for the Clean Energy Program was strongly supported in the conclusions of a study by the United States Department of Energy. The Department agrees with this assessment; therefore, it has included the Incentive Reserve in the CAIR NO<sub>x</sub> Trading Program. Also, the New Jersey Energy Master Plan seeks to achieve a 20 percent reduction in energy use by 2020. One way of doing this is by promoting EE/RE through the Incentive Reserve.

Adopted N.J.A.C. 7:27-30.5(c)4ii states, "sources covered by the New Jersey Board of Public Utilities' claim cannot separately claim incentive allowances." Accordingly, it is improper for both the BPU and a market participant that received funding for a project under the Clean Energy Program to apply for incentive allowances based upon the same activity.



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Because the BPU funds the Clean Energy Program, the BPU has determined that the incentive allowances it receives from the Department will be retired for additional benefit to the environment and the health of the citizens of New Jersey.

8. COMMENT: The Department should increase the size of the Incentive Reserve or provide requirements for reassessment of the size of the Incentive Reserve in the future. (6)

RESPONSE: The Department balanced the need for an Incentive Reserve against the allocations to CAIR sources. The Incentive Reserve was not increased from the five percent that was in the NO<sub>x</sub> Budget Program, because under the NO<sub>x</sub> Budget Program not all of the allowances have been claimed. Moreover, the rules provide additional incentive allowances when the New Source/Growth Reserve is not completely consumed. (See N.J.A.C. 7:27-30.3d(4).) The Department determined that the five percent Incentive Reserve and the ability to roll over the unused New Source/Growth Reserve should be sufficient to cover the claims by the Clean Energy Program, without leaving CAIR sources significantly short of allowances.

9. COMMENT: The Department should refine the BPU's project aggregation provisions at N.J.A.C. 7:27-30.4 to specifically cover small energy efficiency and renewable energy projects financed by private parties. (6)

RESPONSE: The aggregation and calculation for claiming incentive allowances for the Clean Energy Program is being managed by the Board of Public Utilities (BPU). The BPU

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has developed guidance with input from the Department, which is used to calculate the emissions avoided. There is no restriction on the size of the project, or source of funding, that the BPU could consider for claiming incentive allowances. Small projects can be aggregated when claiming incentive allowances, as long as they follow the prescribed protocols.

10. COMMENT: The Department should incorporate anticipated updates of protocols issued by the BPU to calculate energy savings and generation. (6)

RESPONSE: The Department has modified N.J.A.C. 7:27-30.5 on adoption to expressly include supplements or amendments to the New Jersey Clean Energy Protocols. The incentive allowances are provided as an encouragement for individuals or facilities to develop environmentally beneficial techniques. As the Department stated in the proposal summary (see 29 N.J.R. at 304), the BPU guidance document, “New Jersey Clean Energy Program – Protocols to Measure Resource Savings,” provides protocols to calculate the amount of savings that can be claimed. The protocols use, in part, standard input values, which are based upon best available measured or industry data applicable. The commercial and industrial standard values are based on five years of data for most measures, and two years of data for lighting. Accordingly, the protocols and, therefore, the guidance document, are subject to change as the data change. Because the guidance document is subject to revision, it is appropriate that the Department allow individuals and facilities to rely upon the most recent guidance in calculating the amount of energy they saved.

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11. COMMENT: The rules do not include non-EGUs, EGUs less than 25 MWe, or an opt-in

provision. This could be viewed as a disincentive to construct new units that could not participate in CAIR, but emit less than the limits in N.J.A.C. 7:27-19. Additionally, for those persons investing in conventional fuel technologies that provide NO<sub>x</sub> emissions below those of existing CAIR units and the NO<sub>x</sub> RACT rule, provisions should be included so they are eligible for incentive allowances. (8)

RESPONSE: As explained in the proposal summary (see 39 N.J.R. at 301), the Department did not include the non-EGUs and EGUs less than 25 MWe in the rules because the Federal CAIR program does not include them. Also, the method that a state would use to include the sources would require an increase in the state's CAIR budget by the amount these sources were allocated under the NO<sub>x</sub> Budget Program. Collectively, non-EGUs and EGUs less than 25 MWe were net sellers of NO<sub>x</sub> allowances under the NO<sub>x</sub> Budget Program. The Department does not want to increase the NO<sub>x</sub> budget, because doing so would make more allowances available in the market as incentives for non-compliant sources to continue to emit in excess of the applicable limits.

Further, the Department did not include an opt-in provision because of the lack of interest in the NO<sub>x</sub> Budget Program's opt-in provision. In the seven years in which the NO<sub>x</sub> Budget Program has been operating, there have been no requests to opt-in to the program.

In the existing NO<sub>x</sub> Budget Program rules and in these new CAIR NO<sub>x</sub> Trading Program rules, there is specific language that excludes conventional fuel technologies from being eligible for incentive allowances. (See N.J.A.C. 7:27-30.5(f).) This is because those sources would already be eligible for NO<sub>x</sub> allowances if they meet the criteria of being a

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CAIR source. To give incentive allowances to a CAIR source would result in “double-dipping” in the allocation process.

12. COMMENT: The rules require that persons claiming incentive allowances purchase electricity from a New Jersey licensed electricity supplier. For manufacturers that generate their own electricity, this is a disincentive to implement energy efficient measures. (8)

RESPONSE: The requirement that a participant be a New Jersey licensed electricity supplier in order to be eligible for allowances under the Incentive Reserve is continued from the NO<sub>x</sub> Budget Program. The Incentive Reserve is designed to reduce electricity demand on sources that are in the CAIR program. The USEPA did not include in the Federal CAIR program sources that generate their own electricity; therefore, they are not eligible for incentive allowances under the CAIR program.

A manufacturer that produces its own electricity has an incentive to be energy efficient, even without incentive allowances, because an energy efficient unit would have lower operating costs than a unit that uses more energy to operate.

13. COMMENT: The New Source/Growth Reserve should be limited to five percent of the NO<sub>x</sub> Budget. (2)

RESPONSE: As explained in the proposal summary (see 39 N.J.R. at 303), because of the success of the NO<sub>x</sub> Budget Program, the Department is continuing most of that program in the CAIR NO<sub>x</sub> Trading Program. The 10 percent set-aside for the New Source/Growth

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Reserve is the same percentage as is in the NO<sub>x</sub> Budget Program. With the possibility of new EGUs being built in the State to replace existing, high-polluting units, it is necessary to have a reserve large enough for these new units.

There is also need to allow existing clean units that emit in accordance with emission limits to grow. Because the allocation is based on past data, a sudden demand to increase electricity production could necessitate additional allowances for a source. In those cases, the Department does not want to handicap a clean source because its historic data provided a smaller number of allowances. Therefore, this reserve is appropriate to make sure the trading program accommodates growth in clean energy generation.

Finally, the New Source/Growth Reserve also provides additional allowances to the Incentive Reserve, if not all of the allowances in the New Source/Growth Reserve are used. These additional allowances from the New Source/Growth Reserve will be useful if participants make full use of the five percent Incentive Reserve set aside such that the Department determines that more incentive allowances are appropriate. The Department could use the excess New Source/Growth Reserve allowances as incentive allowances.

14. COMMENT: The provisions at N.J.A.C. 7:27-30.3(d) to allocate allowances under the New Source/Growth Reserve for growth violate the timing requirement in the CAIR FIP because once new units have received their allocations, these allowances cannot be taken back. Any prorating for the New Source/Growth Reserve should be done separately for new sources and growth. Using the same prorating mechanism, the new source prorating would be implemented when new sources are allocated allowances and any prorating of growth allowances would be done at the time that growth allowances are allocated. (7)

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RESPONSE: The Department is modifying the rule on adoption to clarify the provisions for allocating allowances to new sources and for growth. The adopted rules do not violate the timing requirement in the CAIR FIP because the rules meet the timing requirements of October 31 in the annual control period, and July 31 in the ozone season control period for new sources (N.J.A.C. 7:27-30.3(d)2i and 30.3(d)2ii), and the timing requirements of March 1 after the control periods for growth allocation (N.J.A.C. 7:27-30.3(d)2iii). To make it clear that the timing requirements are met, on adoption the Department is modifying N.J.A.C. 7:27-30.3(d)2 so that the new source allocation and the growth allocation are separated, but the timing requirements will follow the allocation method that was proposed. Adopted N.J.A.C. 7:27-30.3(d)2 will apply only to new units. Adopted N.J.A.C. 7:27-30.3(d)3 will apply to growth allocation.

15. COMMENT: The Department should allow for overdraft accounts, which can be drawn from by a facility if the facility's compliance account does not have enough allowances to cover its emissions. (2)

RESPONSE: Because the USEPA is the administrator of the tracking system, any account issues would have to be addressed by the USEPA, not by the Department. Under the CAIR FIP, compliance with the emissions cap is at the facility level, not at the unit level. If a single unit exceeds its share of the cap, the facility can reduce the emissions of another unit at the facility to make up the difference, thereby remaining within the facility-wide cap. Also, the

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allowance transfer deadline is two months after the end of the control period, so there should be sufficient time for facilities to obtain the necessary number of allowances for compliance.

16. COMMENT: The allocation of CAIR NO<sub>x</sub> allowances introduces new calculation methodologies versus the NO<sub>x</sub> Budget Program. This introduces an inconsistency for transitioning from the NO<sub>x</sub> Budget Program to the CAIR NO<sub>x</sub> Trading Program. (5)

RESPONSE: As described in the proposal summary (see 39 N.J.R. at 303), the adopted allocation calculations are based upon the NO<sub>x</sub> Budget Program. Because the Department and the regulated community spent considerable resources in developing the NO<sub>x</sub> Budget Program, and tailoring operations to meet the program, the Department started with a proven allocation method and adjusted it to meet the Federal requirements under CAIR. All of the equations in the adopted rules are from the NO<sub>x</sub> Budget Program, with minor changes to encourage energy efficiency by using output data for all allocation. (See 39 N.J.R. at 303-304.) Although the USEPA's baseline method of allocation under the Federal CAIR rules provides for the use of historic heat input data in calculating allocation, the Department has determined that the use of outdated data that does not provide incentives for energy efficiency is not the best allocation method. Also, the USEPA explicitly allowed and encouraged states to consider output based allocations. Accordingly, the Department determined the type of allocation in the NO<sub>x</sub> Budget Program should continue, with changes to make them entirely output based.

The NO<sub>x</sub> Budget Program equations are incorporated into these new rules, with changes to replace variables containing heat input or heat input related constants with

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electricity output or electricity output related constants. The NO<sub>x</sub> Budget Program already uses electricity output equations set forth at N.J.A.C. 7:27-31.7(d)3iii(1) in certain instances. The basic structure of the equations is the same between the adopted CAIR NO<sub>x</sub> Trading Program and the NO<sub>x</sub> Budget Program, which provides the consistency for sources to transition from the NO<sub>x</sub> Budget Program to the CAIR NO<sub>x</sub> Trading Program.

17. COMMENT: The Department should not retire allowances from permanently shutdown units. (2, 5)
18. COMMENT: N.J.A.C. 7:27-30.3(g) violates the CAIR FIP timing requirement by requiring the retirement of allowances already allocated. The Department can discontinue allocation to a permanently shut down unit, but cannot take back allowances. (7)

RESPONSE TO COMMENTS 17 and 18: In N.J.A.C. 7:27-30.3(g), the Department's intent was to discontinue allocation to a unit that is no longer in operation. The NO<sub>x</sub> Budget Program, at N.J.A.C. 7:27-31.7(j), discontinues such allocations. In the proposal, the Department made it clear that the CAIR NO<sub>x</sub> Trading Program is derived from the NO<sub>x</sub> Budget Program. The proposed language at N.J.A.C. 7:27-30.3(g), which would have retired allowances already allocated to permanently shut down units, is inconsistent with the Federal timing requirement, and the timing requirement is not one of the four areas that the USEPA allows a state to modify through an abbreviated SIP. (See 39 N.J.R. at 301.) Further, the proposed retirement of already allocated allowances substantially differs from the method set forth in the highly successful NO<sub>x</sub> Budget Program. The Department's goal was to keep the CAIR NO<sub>x</sub> Trading Program substantially the same as the NO<sub>x</sub> Budget Program.



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The Department's intent, as stated in the proposal summary at 39 N.J.R. at 304, was to prevent a retired unit from benefiting from allocated allowances. On adoption, N.J.A.C. 7:27-30.3(g) is modified to not allocate allowances to a source that is permanently shut down at the time the allowances are being allocated, in order to be consistent with the Federal timing requirement and the existing NO<sub>x</sub> Budget Program. Future allocations to a permanently retired source will be eliminated. The annual and ozone season NO<sub>x</sub> State budgets will not change.

19. COMMENT: The reporting requirements in the proposed rules result in undue burden to the regulated sources. (5)

RESPONSE: Most of the reporting requirements in the rules are continued from the NO<sub>x</sub> Budget Program for the ozone season. The reporting requirement for the CAIR NO<sub>x</sub> Trading Program requires annual reporting because it is an annual trading program. The only additional data required for some sources beyond what the NO<sub>x</sub> Budget Program requires are electricity and useful heat output. Sources should have such data readily available, so the requirement should present no significant burden to the sources. Sources that receive allocations based upon output data under the NO<sub>x</sub> Budget Program are required under the existing rules to submit such data. Finally, these data are essential to the determination of the CAIR units' allowance allocations because these data are necessary for the equations in N.J.A.C. 7:27-30.

20. COMMENT: N.J.A.C. 7:27-30.3(h) violates the CAIR FIP timing requirement. The

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Department should provide a timing limit that meets the timing requirement in the CAIR FIP.

(7)

RESPONSE: As proposed, the rule did not provide a time limit for submitting corrections to the USEPA. The submittal period should not be open ended, in order that the Department, USEPA, and regulated sources can be clear on their obligations under the rules.

Under 40 CFR 97.153 and 97.353, the USEPA will record the allocations for the 2009 control periods by September 30, 2007; the 2010 control periods by September 30, 2008; the 2011-2013 control periods by September 30, 2009; and the control periods for 2014 and thereafter by December 1 four years prior to the control period. As proposed, the rule proposal did not provide an end date by which all corrections had to be made.

Therefore, it did not conform to the Federal rules, which requires the USEPA to record allocations by certain dates.

Add the following as the last sentence in the 2nd paragraph of the RESPONSE: "By referencing directly to the USEPA's timing requirement upon adoption, the rules satisfy the CAIR FIP timing requirement.

The Department is modifying N.J.A.C. 7:27-30.3(h) on adoption to require the submittal of corrections before the USEPA has recorded the initial, erroneous allocations. Also, N.J.A.C. 7:27-30.3(h)1i and ii and 2i through vi are being deleted on adoption, because these provisions are no longer necessary with the addition of an end date for corrections. Corrections can be made between the time the Department submits the allocation and the recordation date.

In addition, the Department is modifying the rules on adoption to delete the

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references to N.J.A.C. 7:27-30.3(h) at N.J.A.C. 7:27-30.3(c)4i(3), (c)4ii(4), and A<sub>0</sub> of

Equation 6 at (c)4iii, because N.J.A.C. 7:27-30.3(h) would no longer be relevant to the calculations. As modified on adoption, the Department's rules conform to the timing requirements of the CAIR FIP.

21. COMMENT: Under the definition of "new unit" in N.J.A.C. 7:27-30.2, new units will generally never be treated as existing units for purposes of allowance allocations, and will only receive allocations from the New Source/Growth Reserve. Is this the Department's intention? (7)

RESPONSE: Yes, the Department intends that any source that is a "new source" would receive allocations only from the New Source/Growth Reserve. Once a source has sufficient data to determine the number of allowances to be allocated to it under N.J.A.C. 7:27-30.3(c)3, it cannot participate in the allocation method for "existing sources."

#### Federal Standards Analysis

Executive Order No. 27(1994) and P.L. 1995, c.65 require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The Department has reviewed the standards and requirements of the adopted new rules, and compared them with the standards and requirements imposed by the Clean Air Act and 40 CFR Part 97. The only two requirements that the Department is adopting which may be more stringent than Federal requirements are the

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retirement of the compliance supplement pool and the reporting requirement of output data for output based allocations. Both of these options are allowed under the Federal rules.

The reason for the retirement of New Jersey's portion of the compliance supplement pool is to prevent any inflation of the emissions cap set for the CAIR NO<sub>x</sub> Cap and Trade Program. Rather than allow any increase in the emissions cap, the Department seeks to decrease emissions in order to provide healthier air for the citizens of New Jersey. The reason for the new reporting requirement of the output data is because these data are necessary for the Department to calculate the allowance allocations for the units based on a method that promotes energy efficiency and clean energy. The output data are not available from any Federal or State program in a timely manner for the Department to be able to meet the due dates for submission of the State allocations under the Federal requirements.

As stated in the Economic Impact statement (39 N.J.R. at 305), the cost of the CAIR cap and trade programs is estimated to be \$19.8 million, which is less than four percent of the \$538 million in estimated health benefits for New Jersey. Specifically, the 660 NO<sub>x</sub> allowances from compliance supplement pool are worth \$1.88 million, and provide similar proportionately higher benefits for New Jersey.

The retirement of the allowances from the compliance supplement pool and the requirement for using output data are achievable with current technology. If the 660 compliance allowances retired, units can rely on existing control measures, such as selective catalytic reduction, or units can buy additional allowances available in the market to cover their NO<sub>x</sub> emissions. The Department encourages compliance from emission reductions at New Jersey units to maximize air quality benefits in New Jersey. With respect to the output reporting requirement, the required data are either already available, can be calculated with available data,

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or can be measured with existing or readily available instruments.

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

7:27-30.3 Allocation of CAIR NO<sub>x</sub> annual allowances and CAIR NO<sub>x</sub> ozone season allowances

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

(c) Pre-Control Period Allocations: There are two separate control periods for each year, annual (January 1 through December 31) and ozone season (May 1 through September 30). The allowances in the CAIR NO<sub>x</sub> annual State budget and the CAIR NO<sub>x</sub> ozone season State budget shall be allocated in accordance with the following steps:

1.-3. (No change from proposal.)

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

i. The sum of the following shall be determined:

(1)-(2) (No change from proposal.)

\*[(3) The number of allowances that have been allocated for a prior year pursuant to (h) below; and]\*

\*[(4)]\* **(3)** (No change in text.)

ii. If the sum in (c)4i above is less than or equal to the CAIR NO<sub>x</sub> annual State budget or the CAIR NO<sub>x</sub> ozone season State budget, then the Department shall allocate allowances as follows:

(1) –(3) (No change from proposal.)

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\*[(4) Any remaining allowances that were not allocated in (c)4ii(1) above shall be allocated pursuant to (h) below;]\* or

- iii. If the sum determined in (c)4i above is greater than the State budget for the control period, then the Department shall allocate the allowances to CAIR units in proportion to the amount of the determined in (c)3 (Step 3) above. The proportional share to be allocated to each shall be determined as follows:

Equation 6

$$*[\text{Allowances} = (\text{Budget}_{\text{NJ}} - A_0 - A_1 - A_2) \times \frac{\text{PA}}{\text{PA}_{\text{Total}}}]*$$

$$\frac{*\text{Allowances} = (\text{Budget}_{\text{NJ}} - A_1 - A_2) \times \frac{\text{PA}}{\text{PA}_{\text{Total}}}}{\text{PA}_{\text{Total}}}$$

Where:

Budget<sub>NJ</sub> = The CAIR NO<sub>x</sub> annual State budget for the annual control period or the CAIR NO<sub>x</sub> ozone season State budget for the ozone season control period;

\*[A<sub>0</sub> = The total number of allowances that have been previously allocated pursuant to (h) below;]\*

A<sub>1</sub> = The total number of allowances allocated to the New Source/Growth Reserve in (c)1 (Step 1) above;

A<sub>2</sub> = The total number of allowances allocated to the Incentive Reserve in (c)2 (Step 2) above;

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

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PA<sub>Total</sub> = The sum of the allowances determined for allocation to all CAIR units under (c)3 (Step 3) above.

(d) Post-Control Period: The Department shall allocate allowances from the New Source/Growth Reserve and Incentive Reserve by submitting allocation information to the USEPA as follows:

1. (No change from proposal.)
2. The Department shall allocate allowances from the New Source/Growth Reserve **for new units** as follows:
  - i. – ii. (No change from proposal.)

\*[iii. For both programs, allocate for the purpose of growth by March 1 of the year following the control period;]\*

\*[iv.]\* **iii.**\* If the sum of all allowances determined to be allocated **for new units**\* from the New Source/Growth Reserve under (d)1**i**\* 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 **new**\* unit equal to the number of allowances determined to be allocated to that **new**\* unit;

\*[v.]\* **iv.**\* If there are allowances left in the New Source/Growth Reserve after distributing the allowances in accordance with \*[(d)2iv]\* **(d)2iii**\* above, then the Department shall allocate the remaining allowances in accordance with \*[(d)4]\* **(d)5**\* below;

\*[vi.]\* **v.**\* If the sum of allowances determined in accordance with (d)1**i**\* above to be allocated to **new**\* units from the New Source/Growth Reserve is greater

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than the number of allowances contained in the reserve, then the Department shall allocate all the allowances in the reserve, and each **\*new\*** unit shall receive a number of allowances equal to its prorated share determined in accordance with the following equation:

Equation 9

$$* [ \text{Allowances}_G = \frac{A_{\text{Unit}}}{A_{\text{Total}}} \times A_{\text{Reserve}} ] *$$

$$\underline{\underline{* \text{Allowances}_N = \frac{A_{\text{Unit}}}{A_{\text{Total}}} \times A_{\text{Reserve}} *}}$$

Where:

$A_{\text{Unit}}$  = The number of allowances determined to be allocated to the **\*new\*** unit, as determined in (d)1**\*i\*** above;

$A_{\text{Total}}$  = The total number of allowances determined to be allocated to all **\*new\*** units, as determined in (d)1**\*i\*** above; and

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

**\*3. The Department shall allocate allowances from the New Source/Growth Reserve for growth as follows:**

- i. For the CAIR NO<sub>x</sub> Annual Trading Program and the CAIR NO<sub>x</sub> Ozone Season Trading Program, allocate for the purpose of growth by March 1 of the year following the control period;**
- ii. If the sum of all allowances determined to be allocated for growth from the New Source/Growth Reserve under (d)1ii above is less than or equal to the number of allowances left in the reserve after allocating to new units in**



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**accordance with (d)2 above, then the Department shall allocate the number of allowances to each unit for growth equal to the number of allowances determined to be allocated to that unit;\***

**iii. If there are allowances left in the New Source/Growth Reserve after distributing the allowances in accordance with (d)3ii above, then the Department shall allocate the remaining allowances in accordance with (d)5 below;**

**v. If the sum of allowances determined in accordance with (d)1ii above to be allocated growth from the New Source/Growth Reserve is greater than the number of allowances left in the reserve after allocating to new units in accordance with (d)2 above, then the Department shall allocate all the allowances in the reserve, and each unit shall receive a number of growth allowances equal to its prorated share determined in accordance with the following equation:**

**Equation 10**

$$\text{Allowances}_G = \frac{A_{\text{Unit}}}{A_{\text{Total}}} \times A'_{\text{Reserve}}$$

**Where:**

**A<sub>Unit</sub> = The number of allowances determined to be allocated to the unit for growth, as determined in (d)1ii above;**

**A<sub>Total</sub> = The total number of allowances determined to be allocated to all units for growth, as determined in (d)1ii above; and**

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$$A'_{Reserve} = \frac{\text{The number of allowances left in the New Source/Growth}}{\text{Reserve after allocating to new units in accordance with (d)2 above;}}$$

**Reserve after allocating to new units in accordance with (d)2**

**above;}}**

\*[3.]\* **4.** 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 determine the number of allowances to be allocated to each claimant who submitted a claim for the incentive allowances within 30 days after the current control periods. After the claim has been received and approved by the Department pursuant to N.J.A.C. 7:27-30.5, the number of incentive allowances shall be determined in accordance with the following equation:

Equation \*[10]\* **11**

$$A_{Claim} = \frac{OAR}{2,000} \times Elec$$

Where:

OAR = The output allocation rate;

Elec = The amount of saved or generated electricity, expressed in MWh, in the approved claim for the specified control period; and

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

- ii. If the sum of all allowances determined to be allocated to claimants from the Incentive Reserve under \*[ (d)3i]\* **(d)4i** above is less than or equal to the

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number of allowances in the reserve, then the Department shall allocate to each claimant, the number of allowances determined to be allocated to that claimant;

- iii. If there are allowances left in the Incentive Reserve after distributing the allowances in accordance with *[(d)3ii]* **(d)4ii** above, then the Department shall allocate such allowances in accordance with *[(d)4]* **(d)5** below;
- iv. If the sum of all allowances determined to be allocated to claimants from the Incentive Reserve under *[(d)3i]* **(d)4i** 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:

Equation *[11]* **12**

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

Where:

$A_{\text{Claim}}$  = The number of allowances determined to be allocated to the claimant under *[(d)3i]* **(d)4i** above;

$A_{\text{Total}}$  = The total number of allowances determined to be allocated to all claimants under *[(d)3i]* **(d)4i** above;

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

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

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- i. If there are allowances remaining in the Incentive Reserve after the allowances are allocated in accordance with [(d)3] (d)4 above, and if the number of allowances in the New Source/Growth Reserve were less than the total number of allowances determined to be allocated under (d)1 above for the current control periods, then the Department shall allocate allowances remaining in the Incentive Reserve to the units being allocated from the New Source Reserve/Growth Reserve. The number of allowances to be allocated to each unit shall be proportional to the number that each unit was under-allocated, relative to the number of determined allowances under (d)1 above, until the remaining allowances in the Incentive Reserve have all been allocated or until each unit is no longer under-allocated, whichever comes first. Any remaining allowances left in the Incentive Reserve after this procedure takes place shall be allocated pursuant to [(d)4iii] (d)5iii below.
- ii. If there are allowances remaining in the New Source Reserve/Growth Reserve after the allowances are allocated in accordance with [(d)2] (d)3 above, and if the number of allowances in the Incentive Reserve were less than the total number of allowances determined to be allocated to claimants under [(d)3] (d)4 above for the current control periods, then the Department shall allocate allowances remaining in the New Source Reserve/Growth Reserve to the claimants begin 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 under-allocated, relative to the number determined to be allocated to the claimant under [(d)3] (d)4 above,

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until the remaining allowances in the New Source Reserve/Growth Reserve have all been allocated or until each claimant is no longer under-allocated, whichever comes first. Any remaining allowances left in the New Source Reserve/Growth Reserve after this procedure takes place shall be allocated pursuant to \*[(d)4iii above]\* **\*(d)5iii below\***.

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

- (1) If the sum determined at (c)4i above is greater than New Jersey's State budgets under CAIR for a specified control period, then the Department shall allocate allowances remaining in the reserves to CAIR units. The number of allowances to be allocated to each CAIR unit shall be proportional to the number that each unit was under-allocated, relative to the number determined to be allocated to the unit under (c)3 above, until the remaining allowances in the reserves have all been allocated or until each unit is no longer under-allocated, whichever comes first. Any remaining allowances left in the reserves after this procedure takes place shall be allocated pursuant to \*[(d)4iii(2)]\* **\*(d)5iii(2)\*** below; and
- (2) Any allowances remaining in the reserves that have not been allocated under \*[(c)4iii(1)]\* **\*(d)5iii(1)\*** above shall remain in the Incentive Reserve or the New Source Reserve/Growth Reserve to be available for allocation in the following year.

(e)-(f) (No change from proposal.)

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(g) Notwithstanding the provisions of (c) and (d) above, **\*the Department shall not allocate**

**any allowances to\*** a CAIR unit that is **\*no longer in operation at the time that allowances are being allocated\*** **\*[permanently shut down shall retire any allowance that has been allocated for the year when the shut down occurred and for each year thereafter. Allowances shall be transferred to the USEPA for retirement pursuant 40 CFR Part 97 Subpart GG and GGGG]\*.**

(h) The Department shall notify the authorized account representative **\*prior to the recordation of the unit's allowance allocation by the USEPA in accordance with 40 CFR 97.153 and 97.353,\*** if the Department determines that\*[,]\* the Department has erroneously allocated too many or too few allowances to an account, or, in allocating allowances, the Department relied upon data **\*[or projections]\*** that it determines are inaccurate.

1. If too many allowances were allocated, then\*[:]\* **\*the Department shall determine the correct number of allowances and submit corrected allocations under (c) or (d) above before the USEPA records the erroneous allocations.\***

\*[i. The Department shall determine the number of allowances over-allocated to the account; and]\*

\*[ii. For the control period five years after the year when the over-allocation was made, the Department shall reduce the number of allowances allocated to the account pursuant (c) and (d) above by the number determined in (h)1i above;]\*

2. If too few allowances were allocated, then\*[:]\* **\*the Department shall determine the correct number of allowances and submit corrected allocations under (c) or (d) above before the USEPA records the erroneous allocations.\***

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- \*[i. Take unallocated allowances pursuant (c)4ii(4) above for the year the under-allocation was made and deposit to the account a number of allowances equal to the number of allowances that was under-allocated;
- ii. If there are not enough allowances pursuant (h)2i above, then take unallocated allowances pursuant (c)4ii(4) above for the first year after the under-allocation took place and deposit to the account a number of allowances equal to the number of allowances that was under-allocated.
- iii. If there are not enough allowances pursuant (h)2i and ii above, then take unallocated allowances pursuant (c)4ii(4) above for the second year after the under-allocation took place and deposit to the account a number of allowances equal to the number of allowances that was under-allocated;
- iv. If there are not enough allowances pursuant (h)2i through iii above, then take unallocated allowances pursuant (c)4ii(4) above for the third year after the under-allocation took place and deposit to the account a number of allowances equal to the number of allowances that was under-allocated;
- v. If there are not enough allowances pursuant (h)2i through iv above, then take unallocated allowances pursuant (c)4ii(4) above for the fourth year after the under-allocation took place and deposit to the account a number of allowances equal to the number of allowances that was under-allocated; and
- vi. If there are not enough allowances pursuant (h)2i through v above, then the Department shall take from the base emission budget for the fifth year after the under-allocation took place a number of allowances equal to the number of allowances under-allocated, and deposit them to the account. The number of

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allowances deposited to the account shall be subtracted from the base emission budget of that year.]\*

7:27-30.5 Claims for incentive allowances

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

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

1. A New Jersey consumer of electricity who:

i. (No change from proposal.)

ii. Reduces its electricity consumption at a facility located in New Jersey through implementation of an energy efficiency measure, initiated in 1992 or thereafter, which:

(1) Belongs to a class to which the “New Jersey Clean Energy Program – Protocols to Measure Resource Savings (New Jersey Clean Energy Protocols),” issued by New Jersey’s Board of Public Utilities in September, 2004\*, **as supplemented or amended,\***

([http://www.state.nj.us/bpu/home/BO\\_CE.shtml](http://www.state.nj.us/bpu/home/BO_CE.shtml)), applies;

(2)-(3) (No change from proposal.)

2.-4. (No change from proposal.)

(d)-(e) (No change from proposal.)

(f) The amount of electric generation or savings being claimed shall be determined as follows:

1. For energy measures, the amount of electricity claimed to be saved shall be calculated pursuant to the guidance document: “New Jersey Clean Energy Program – Protocols to Measure Resource Savings (New Jersey Clean Energy Protocols),” issued by New



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Jersey's Board of Public Utilities in September, 2004\*, as supplemented or

amended,\* ([http://www.state.nj.us/bpu/home/BO\\_CE.shtml](http://www.state.nj.us/bpu/home/BO_CE.shtml)), incorporated herein by

reference; and

2. (No change from proposal.)

(g)-(i) (No change from proposal.)