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## **ENVIRONMENTAL PROTECTION**

### **AIR QUALITY, ENERGY, AND SUSTAINABILITY**

#### **CO<sub>2</sub> Budget Trading Program**

**Proposed Amendments:** N.J.A.C. 7:27-22.1 and 22.16 and 7:27A-3.2, 3.5, and 3.10

**Proposed New Rules:** N.J.A.C. 7:27-2.28 and 7:27C

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 26:2C-1 et seq., particularly 26:2C-45 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 05-18-11.

Proposal Number: PRN 2018-113.

A **public hearing** concerning this notice of proposal will be held on:

Friday, January 25, 2019, at 9:00 A.M. at:

New Jersey Department of Environmental Protection

Hearing Room, 1st Floor

401 East State Street

Trenton, New Jersey

Directions to the hearing room may be found at the Department's website address

<http://www.state.nj.us/dep/where.htm>.

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Submit written comments by close of business on February 15, 2019, electronically at [www.nj.gov/dep/rules/comments](http://www.nj.gov/dep/rules/comments). Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket No. 05-18-11

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

Written comments may also be submitted at the public hearing. 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.

The proposed amendments and new rules will become operative 60 days after their adoption (see N.J.S.A. 26:2C-8). The notice of proposal may be viewed or downloaded from the Department's website at [www.nj.gov/dep/rules](http://www.nj.gov/dep/rules).

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The agency proposal follows:

### **Summary**

Since the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The proposed new rules and amendments establish the New Jersey Carbon Dioxide (CO<sub>2</sub>) Budget Trading Program, which is designed to reduce anthropogenic emissions of carbon dioxide (CO<sub>2</sub>), a greenhouse gas, in an economically efficient manner, from large fossil fuel-fired electricity generating units, referred to as CO<sub>2</sub> budget units, in New Jersey. These sources of CO<sub>2</sub> emissions are referred to as CO<sub>2</sub> budget units. This purpose is stated at proposed N.J.A.C. 7:27C-1.1. The CO<sub>2</sub> Budget Trading Program is New Jersey's commitment to the Regional Greenhouse Gas Initiative (RGGI), a regional, cooperative program to cap and reduce CO<sub>2</sub> emissions from power plants (CO<sub>2</sub> budget sources) in the participating states to address the significant challenge of climate change. Regionally, CO<sub>2</sub> budget units are responsible for approximately 95 percent of CO<sub>2</sub> emissions from the electric generation sector. As of July 2018, the participating RGGI states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. In addition to New Jersey, Virginia is in the process of joining RGGI. The definitions of "CO<sub>2</sub> budget source" and "CO<sub>2</sub> budget unit" at proposed N.J.A.C. 7:27C-1.2 are from the CO<sub>2</sub> Budget Trading Program Model Rule, discussed below.

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New Jersey previously participated in RGGI, shortly after its formation. New Jersey's prior participation in RGGI became effective in 2008. That same year the Department promulgated rules to implement New Jersey's component of the CO<sub>2</sub> Budget Trading Program (40 N.J.R. 3792(a); 6541(b)). The first three-year control period of the regional CO<sub>2</sub> Budget Trading Program ran from January 1, 2009, through December 31, 2011. In May 2011, pursuant to then-Governor Christie's direction, New Jersey formally withdrew from RGGI, effective January 1, 2012, coinciding with the end of the first control period. In 2015, the Department repealed the rules that had implemented New Jersey's participation in RGGI (46 N.J.R. 1510(a); 47 N.J.R. 1937(a)).

As mentioned above, the CO<sub>2</sub> Budget Trading Program is a cap-and-trade program, which is a market-based approach used to control pollution by providing economic incentives for achieving reductions in CO<sub>2</sub> emissions from power plants. The RGGI participating states establish a regional CO<sub>2</sub> budget allowance cap, which represents the sum of the CO<sub>2</sub> base budgets emissions caps of each participating state, otherwise referred to as that state's annual base budget. New Jersey's participation in RGGI required a recalculation of the RGGI regional CO<sub>2</sub> budget allowance cap, as well as a calculation of the annual base budgets for New Jersey for calendar years 2020 and later, which are set forth in the proposed rules.

Each year, each participating state issues CO<sub>2</sub> allowances in an amount equivalent to its annual base budget. Each allowance represents the limited authorization to emit or discharge one ton of CO<sub>2</sub>. There is no property right to a CO<sub>2</sub> allowance, which can be terminated or limited by the issuing state entity. CO<sub>2</sub> budget sources in the participating states are required to hold allowances equivalent to their emissions. The vast majority of the allowances are

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distributed through quarterly, regional CO<sub>2</sub> allowance auctions, which are the main platform for CO<sub>2</sub> budget sources to purchase CO<sub>2</sub> allowances. While each participating state has the option of holding its own auction (see proposed N.J.A.C. 7:27C-11.3, Auction timing and CO<sub>2</sub> allowance submission schedule), historically quarterly auctions have been held on behalf of the states as a single auction, administered by RGGI, Inc. RGGI, Inc. is a non-profit corporation created to provide technical and administrative services to support the development and implementation of each RGGI participating state's CO<sub>2</sub> Budget Trading Program. The CO<sub>2</sub> Budget Trading Program is designed to facilitate the auction or sale of the majority of the CO<sub>2</sub> allowances.

The proposed amendments and new rules are based on the CO<sub>2</sub> Budget Trading Program Model Rule (RGGI Model Rule or Model Rule) developed and updated by the RGGI Staff Working Group, comprised of staff members from the environmental and energy regulatory agencies in each participating state. The RGGI Model Rule is the basis for the coordinating companion rules in the nine other participating states, and the basis for Virginia's proposed CO<sub>2</sub> Budget Trading Program rules, should it complete the process of joining RGGI. The development of the RGGI Model Rule has been supported by an extensive regional stakeholder process that engaged the regulated community, environmental non-profits, and other organizations with technical expertise in the design of cap-and-trade programs. To a large extent, the RGGI Model Rule is based on the United States Environmental Protection Agency's (EPA's) rules for two of its pollutant-specific regulatory trading programs, addressing oxides of nitrogen (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>), the NO<sub>x</sub> Budget Trading Program and the Clean Air Interstate Rule (CAIR) NO<sub>x</sub> and SO<sub>2</sub> Trading Programs at 40 CFR Part 96 (the Part 96 rule). The Part 96 rule provided the framework for the basic administrative functioning of the

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CO<sub>2</sub> Budget Trading Program, such as the process for establishing compliance and general accounts, identifying authorized account representatives, submission of compliance certification, allowance tracking system operation, and allowance transfers. Similarly, the emissions monitoring and reporting requirements for the CO<sub>2</sub> Budget Trading Program in the RGGI Model Rule rely in part on EPA's rules for emissions monitoring and reporting at 40 CFR Part 75. The 2017 RGGI Model Rule, the most recent iteration, can be viewed at RGGI's website at [www.rggi.org](http://www.rggi.org).

The RGGI Model Rule provides states with flexibility in adopting provisions regarding applicability and source exemptions, allowance allocations and allowance set-asides, and permitting. Except for those portions of the RGGI Model Rule where states are provided with program design discretion, the proposed new rules are materially consistent with the RGGI Model Rule. This consistency is necessary to ensure the fungibility of CO<sub>2</sub> allowances across the participating states, which supports the regional trading of CO<sub>2</sub> allowances and the use of a CO<sub>2</sub> allowance issued in one participating state for compliance by a regulated source in another participating state, and uniform emissions monitoring and reporting requirements.

### Applicability

The CO<sub>2</sub> Budget Trading Program rules, pursuant to proposed new N.J.A.C. 7:27C-1.3, Applicability and exemption, apply to CO<sub>2</sub> budget units, which are defined at proposed N.J.A.C. 7:27C-1.2 as fossil fuel-fired electric generating units that, at any time on or after January 1, 2005, serve (or served) an electricity generator with a nameplate capacity equal to or greater than 25 megawatts electric (MWe). The proposed new rules also apply to CO<sub>2</sub> budget sources,

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defined at proposed N.J.A.C. 7:27C-1.2 as facilities that include one or more CO<sub>2</sub> budget units.

A unit that no longer serves a 25 MWe or greater electricity generator will still be considered a CO<sub>2</sub> budget unit under the proposed new rules, so long as it served such a generator on or after January 1, 2005. Once a unit is deemed a CO<sub>2</sub> budget unit under the proposed new rules, the unit will continue to be subject to the CO<sub>2</sub> Budget Trading Program rules, regardless of subsequent modifications to the unit.

Whether a unit is “fossil fuel-fired” depends on when it commences operation. The proposed definition of “fossil fuel-fired” at N.J.A.C. 7:27C-1.2 provides that a unit that commenced operation on or after January 1, 2005, is considered fossil fuel-fired, if fossil fuel comprises more than five percent of its total annual heat input during any year. A unit that commenced operation prior to January 1, 2005, is fossil fuel-fired if fossil fuel comprises more than 50 percent of its total annual heat input during any year.

The RGGI Model Rule provides participating states the option of exempting units whose electrical output to the electric grid is restricted by permit conditions. Accordingly, proposed N.J.A.C. 7:27C-1.3 exempts any fossil fuel-fired electric generating unit 25 MWe or larger with an operating permit condition that restricts the supply of the unit’s annual electric output to the electric grid to no more than 10 percent of the unit’s annual gross electricity generation. This exemption is effective beginning on the January 1 that is on or after the date on which such an operating permit restriction becomes final. The proposed rule provides further conditions for this exemption, and addresses continued compliance with the permit restriction, timing, reporting, record retention, and the circumstances under which the CO<sub>2</sub> budget unit will lose its exemption. More specifically, owners and operators of exempted units are required to report

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to the Department the unit's annual gross electricity generation and the amount of annual gross electricity generation supplied by the unit to the electricity grid. An exempt unit will lose its exemption if the limitation on the amount of annual gross electricity generation that may be supplied to the electricity grid is removed from the operating permit, or if the unit fails to comply with the required electricity generation reporting requirements. New Jersey's annual base budget does not reflect emissions from exempted sources. Accordingly, the retirement of allowances in an amount equal to these emissions is not necessary and is not reflected in the proposed rules. Some participating states have chosen to include the emissions from their exempted sources in their annual base budget and then retire them at the end of the control period, with the same net result as the approach New Jersey is proposing.

### General Provisions

Proposed N.J.A.C. 7:27C-1.4 contains the general provisions that apply to CO<sub>2</sub> budget sources and CO<sub>2</sub> budget units, the owners and operators of the CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit, and CO<sub>2</sub> allowances under the CO<sub>2</sub> Budget Trading Program. If a proposed rule states that it applies to a CO<sub>2</sub> budget source or the CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source, the rule also applies to the owners and operators of the source and to the CO<sub>2</sub> budget units at the source. The definitions of "CO<sub>2</sub> authorized account representative" or "account representative" and "alternate CO<sub>2</sub> authorized account representative" or "alternate account representative," at proposed N.J.A.C. 7:27C-1.2 are from the Model Rule. A CO<sub>2</sub> budget source's operating permit under N.J.A.C. 7:27-22 must include, or be modified to include, CO<sub>2</sub> Budget Trading Program requirements.

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A CO<sub>2</sub> budget source must hold allowances in an account established under the CO<sub>2</sub> Budget Trading program referred to as a compliance account. Compliance with the CO<sub>2</sub> Budget Trading Program rules is determined by control period, initial control period, or interim control period, as discussed below. Beginning on the later of January 1, 2020, or the date on which a CO<sub>2</sub> budget unit commences operation, there must be enough CO<sub>2</sub> allowances in the CO<sub>2</sub> budget source's compliance account by the CO<sub>2</sub> allowance transfer deadline for a control period or the initial control period to at least equal the source's CO<sub>2</sub> emissions for the control period or initial control period. Proposed N.J.A.C. 7:27C-1.4 provides that a CO<sub>2</sub> budget source must hold CO<sub>2</sub> allowances for no less than 50 percent of the emissions from the CO<sub>2</sub> budget unit during an interim control period. A CO<sub>2</sub> budget source can use a CO<sub>2</sub> offset allowance to meet this requirement, but only up to the applicable percent limitation of proposed N.J.A.C. 7:27C-6, CO<sub>2</sub> Allowance Tracking System (COATS). A CO<sub>2</sub> budget source cannot use a CO<sub>2</sub> allowance of an allocation year that falls within a future control period to meet the requirement for a current control period. An allocation year means the calendar year for which the Department allocates or awards the allowance (see proposed N.J.A.C. 7:27C-1.2). Thus, for example, it cannot use a CO<sub>2</sub> allowance of the 2024 allocation year or subsequent allocation years to meet the requirement for a control period that ends in 2023. Although such a future allowance cannot be used by the CO<sub>2</sub> budget source to meet its compliance requirement, future allowances will be deducted as a treble penalty for failure to hold sufficient allowances of the appropriate control period, as provided at N.J.A.C. 7:27C-6.9, and discussed below. The holding, transfer, and deduction of CO<sub>2</sub> allowances are governed by proposed N.J.A.C. 7:27C-5,

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6, and 7, discussed below. The definitions of “CO<sub>2</sub> allowance” and “CO<sub>2</sub> allowance deduction” or “deduct CO<sub>2</sub> allowances,” proposed at N.J.A.C. 7:27C-1.2, are from the RGGI Model Rule.

If a source emits more CO<sub>2</sub> than it holds allowances for as of the CO<sub>2</sub> allowance transfer deadline for a control period, it is in violation of these rules; each ton of CO<sub>2</sub> emitted in excess of requirements of this chapter is a separate violation. Compliance with the rules, and the forfeiture of allowances as a penalty for such violations, are mentioned in proposed N.J.A.C. 7:27C-1.4, but are addressed in detail at proposed N.J.A.C. 7:27C-6.9, Compliance. Proposed N.J.A.C. 7:27C-1.4(q) provides that a violation cannot be cured by a subsequent renewal or modification of the CO<sub>2</sub> budget source’s operating permit.

The source must retain on site for 10 years those documents that are necessary to determine whether the source has complied with this chapter. If necessary, the Department can determine that an additional retention period is required to determine compliance. To ensure that the Department has sufficient information to determine compliance, the CO<sub>2</sub> authorized account representative must also submit documentation as required at N.J.A.C. 7:27C-4, discussed below. Proposed N.J.A.C. 7:27C-1.4(t) clarifies that the required compliance with all other provisions of applicable State or Federal law is unaffected by the CO<sub>2</sub> Budget Trading program, or the rules or permits issued thereunder.

#### Permitting Requirements for CO<sub>2</sub> Budget Sources

A source that qualifies as a CO<sub>2</sub> budget source is already subject to the operating permit requirements of N.J.A.C. 7:27-22. Therefore, the requirement at proposed N.J.A.C. 7:27C-3.1, General requirements for an operating permit incorporating CO<sub>2</sub> Budget Trading Program

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requirements, that each CO<sub>2</sub> budget source has a valid operating permit issued by the Department is not new. Proposed amended N.J.A.C. 7:27-22.16, Operating permit contents, and 22.28, Incorporation of CO<sub>2</sub> Budget Trading Program requirements, and 7:27C-3.1 require a CO<sub>2</sub> budget source to add CO<sub>2</sub> Budget Trading Program requirements to its operating permit (whether the permit is new, renewed, or modified), including the program-specific monitoring, recordkeeping, and reporting requirements. The compliance plan included in the operating permit must also be modified to reflect CO<sub>2</sub> Budget Trading Program requirements. The CO<sub>2</sub> Budget Trading Program requirements can be incorporated into the facility's operating permit as part of an application for an initial operating permit (if a CO<sub>2</sub> budget source that does not yet have an operating permit), or an application for the renewal or modification, including minor modification, of an existing operating permit. "Facility" is defined at proposed N.J.A.C. 7:27C-1.2.

The deadlines for applying for a new, renewed, or modified operating permit are addressed at proposed amended N.J.A.C. 7:27-22.28. They are designed to ensure that the operating permit for the CO<sub>2</sub> budget source contains the required terms prior to the control period in which the facility first operates a CO<sub>2</sub> budget unit. The complete operating permit application, required under proposed N.J.A.C. 7:27C-3.2, must include information to help the Department identify the CO<sub>2</sub> budget source and CO<sub>2</sub> budget units at the source and must also include the applicable requirements of the CO<sub>2</sub> Budget Trading Program at proposed N.J.A.C. 7:27C-1, 4, 6, and 8, as provided at proposed N.J.A.C. 7:27C-3.3, Contents of an application for an operating permit incorporating CO<sub>2</sub> Budget Trading Program requirements.

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The compliance plan, as otherwise required at existing N.J.A.C. 7:27-22.16, Operating permit contents, and at existing N.J.A.C. 7:27-22.9, Compliance plans, includes a monitoring plan, which defines CO<sub>2</sub> emissions and net energy output monitoring procedures for a particular CO<sub>2</sub> budget source in accordance with the monitoring and reporting requirements of the program. The terms “facility code” and “ORIS code,” which are used in the identification of a CO<sub>2</sub> budget source for permitting purposes, are defined at proposed N.J.A.C. 7:27C-1.2.

#### Use of Allowances to Comply with CO<sub>2</sub> Budget Trading Program Requirements

A CO<sub>2</sub> allowance represents a limited authorization by the Department or other participating state for a CO<sub>2</sub> budget source to emit one ton of CO<sub>2</sub>. The CO<sub>2</sub> emissions compliance requirement is referred to as the “CO<sub>2</sub> budget emissions limitation,” defined at proposed N.J.A.C. 7:27C-1.2 and from the RGGI Model Rule. The proposed new rules define the CO<sub>2</sub> Budget Trading Program compliance period at N.J.A.C. 7:27C-1.2 as a three-year “control period,” each of the first two years of which are referred to as an “interim control period.” The single year “initial control period” is discussed below. Within two months after the end of a control period, that is, by the CO<sub>2</sub> allowance transfer deadline (March 1 or the first business day in March), a CO<sub>2</sub> budget source must have sufficient CO<sub>2</sub> allowances in its compliance account to cover the amount of its reported CO<sub>2</sub> emissions for the given control period.

The present RGGI control period began on January 1, 2018, and will end on December 31, 2020. New Jersey will participate in only the third year of the present control period. Accordingly, the proposed rules refer to January through December 2020 as the “initial control period,” and, as discussed below, the requirements for the single-year initial control period will

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differ somewhat from the requirements for the single-year interim control periods and the three-year control periods. Proposed N.J.A.C. 7:27C-1.2 defines all terms related to control periods, including “CO<sub>2</sub> allowance transfer deadline,” “control period,” “initial control period,” and “interim control period.”

Proposed N.J.A.C. 7:27C-6.9, Compliance, provides the circumstances under which CO<sub>2</sub> allowances may be deducted for compliance with the CO<sub>2</sub> requirements for a given control period. These address the allocation year of the CO<sub>2</sub> allowances; the timing of the transfer or holding of the CO<sub>2</sub> allowances; the maximum percentage of the CO<sub>2</sub> budget source’s CO<sub>2</sub> emissions for the control period that can be met by using CO<sub>2</sub> offset allowances; and the limitation that the CO<sub>2</sub> allowances are not necessary for deductions for excess emissions for a prior control period. The Department will deduct available CO<sub>2</sub> allowances to cover a source’s CO<sub>2</sub> emissions for a given control period until a CO<sub>2</sub> allowance has been deducted for each ton of total CO<sub>2</sub> emissions (after accounting for CO<sub>2</sub> emissions attributable to the burning of eligible biomass and adjusting the compliance obligation of a cogeneration unit) or, if there are not enough available CO<sub>2</sub> allowances for that purpose, until there are no more available CO<sub>2</sub> allowances in the compliance account. In the case of insufficient allowances, after depleting the available CO<sub>2</sub> allowances, the Department will deduct and record CO<sub>2</sub> allowances from allocation years after the control period in question, but at a rate three times the number of excess emissions. If there are insufficient CO<sub>2</sub> allowances for this purpose, the source must immediately transfer sufficient allowances into its compliance account. CO<sub>2</sub> offset allowances cannot be deducted to account for the source’s excess emissions. The deduction of CO<sub>2</sub> allowances under proposed N.J.A.C. 7:27C-6.9, where there were not sufficient available

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allowances, does not affect the liability or other obligations of the owners and operators of the CO<sub>2</sub> budget source or the CO<sub>2</sub> budget units at the source for the same violation. Proposed N.J.A.C. 7:27C-1.2 defines “excess emissions” and “excess interim emissions.” The proposed definition of excess interim emissions reflects the fact that a CO<sub>2</sub> budget source is only required to hold allowances to account for half the emissions for an interim control period. The Department proposes defining “compliance obligation” at N.J.A.C. 7:27C-1.2 to refer briefly to the number of allowances a CO<sub>2</sub> budget source needs to hold under the requirements of this program.

A CO<sub>2</sub> authorized account representative can request the deduction of specific CO<sub>2</sub> allowances in the compliance account, as identified by serial number in the compliance certification report submitted in accordance with N.J.A.C. 7:27C-4.1, Compliance certification report, discussed below. This provides the CO<sub>2</sub> authorized account representative flexibility in managing the CO<sub>2</sub> allowances in the compliance account, by allocation year and allowance type. Proposed N.J.A.C. 7:27C-6.9 establishes the order in which the Department will deduct CO<sub>2</sub> allowances for a given control period from a compliance account, when there is no, or only partial, identification by serial number of available CO<sub>2</sub> allowances, based on allocation, order of recordation, and whether or not they are CO<sub>2</sub> offset allowances.

The proposed rule permits challenges to the deduction of CO<sub>2</sub> allowances from a CO<sub>2</sub> budget source’s account because of excess emissions, either as part of the initial administrative enforcement or any civil or criminal judicial action relating to the excess emissions violation. These challenges will not prevent the Department from deducting the CO<sub>2</sub> allowances in question, unless and until they result, by settlement or final judicial action, in a revision of the

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Department's underlying determination regarding excess emissions of the CO<sub>2</sub> budget source.

Proposed N.J.A.C. 7:27C-6.9 describes the action the Department will take if settlement or final judicial action revise the Department's determination of excess emissions as too low or too high, respectively.

### *Compliance flexibility*

The proposed new rules provide a CO<sub>2</sub> budget source with some flexibility in meeting the compliance obligation. Rather than use CO<sub>2</sub> allowances, a CO<sub>2</sub> budget source can use CO<sub>2</sub> offset allowances to meet a limited portion of its compliance obligation (see "Offsets" below). In addition, the CO<sub>2</sub> budget program supports the use of certain alternative fuels. If a CO<sub>2</sub> budget source burns fuel that meets the definition at proposed N.J.A.C. 7:27C-1.2 for eligible biomass, it may deduct the CO<sub>2</sub> emissions resulting from the combustion of that fuel from the source's CO<sub>2</sub> emissions compliance obligation, consistent with proposed N.J.A.C. 7:27C-6.9 and 8.7. For those emissions, no CO<sub>2</sub> allowances are required. The proposed rules require monitoring CO<sub>2</sub> emissions from the combustion of eligible biomass, as discussed below, in order to account for such CO<sub>2</sub> emissions when determining a CO<sub>2</sub> budget source's CO<sub>2</sub> budget emissions limitation.

The rules also provide flexibility to cogeneration units, otherwise known as combined heat and power (CHP) units. A cogeneration unit may deduct from its emissions compliance obligation the CO<sub>2</sub> emissions resulting from the generation of useful thermal energy and electricity that is directly supplied to the co-located facility, consistent with proposed N.J.A.C. 7:27C-5.3. The cogeneration unit cannot deduct CO<sub>2</sub> emissions associated with the production

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of electricity that is supplied to a regional electric grid, including, but not limited to, the regional transmission organization, PJM Interconnection (PJM), or the New York Independent System Operator (NYISO) transmission and related distribution systems; it will be responsible for securing allowances for those emissions. This is discussed further under the heading “adjustment of compliance obligation for cogeneration units” below. Proposed N.J.A.C. 7:27C-1.2 defines “NYISO” and “PJM.”

In addition to offsets, alternative fuel combustion and cogeneration, mechanisms proposed to provide greater compliance flexibility include the unrestricted banking of CO<sub>2</sub> allowances, a three-year control period, and interim control periods. The Department proposes at N.J.A.C. 7:27C-6.10, Banking, to allow sources to bank CO<sub>2</sub> allowances for use in meeting compliance obligations in a future control period. CO<sub>2</sub> allowances held in general accounts are also valid unless and until deducted or transferred from that account. Allowance banking will support CO<sub>2</sub> allowance price stability, while providing an incentive for regulated sources to hedge against future year emissions uncertainty. Multi-year control periods provide regulated sources with more flexibility to adjust to variations in electricity demand (driven by meteorology and load growth), fuel price spikes, clean unit outages, and other market occurrences or conditions that could impact CO<sub>2</sub> emissions and the short-term demand for CO<sub>2</sub> allowances. Flexibility is also provided by the requirement that CO<sub>2</sub> budget sources need only hold CO<sub>2</sub> allowances equivalent to 50 percent of their emissions during each of the two interim control periods with the requirement that by the end of the control period there are sufficient CO<sub>2</sub> allowances to account for 100 percent of the emissions for the entire control period. The

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CO<sub>2</sub> allowances previously deducted to meet the compliance obligation for each of the two interim control periods will be subtracted from the three-year compliance true-up obligation.

### *Compliance Certification Report*

The compliance certification report provides official documentation that supports evidence of the CO<sub>2</sub> budget source's compliance with the emissions requirements of the CO<sub>2</sub> Budget Trading Program. Proposed N.J.A.C. 7:27C-4.1, Compliance certification report, establishes the timing and contents requirements for the compliance certification report.

The CO<sub>2</sub> authorized account representative must submit a compliance certification report to the Department, in a Department-prescribed format, by March 1 following each control period. The compliance certification report must include information that will allow the Department to identify the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source, the CO<sub>2</sub> allowances, and CO<sub>2</sub> offset allowances to be deducted. It must also include a certification by the CO<sub>2</sub> authorized account representative regarding the compliant operation of the source and the CO<sub>2</sub> budget units at the source during the calendar years covered by the report, including information concerning the proper maintenance of the applicable monitoring plans; proper monitoring and reporting of all CO<sub>2</sub> emissions from the units at the source; any change in facts upon which the monitor certifications are based; and an explanation of change in the monitor certification facts.

Proposed N.J.A.C. 7:27C-4.2, Department action on compliance certifications, addresses the handling of submitted compliance certifications and other submissions under the proposed new chapter. Compliance certifications and other submissions are subject to review by the

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Department, including audits by the Department, based on which the Department may adjust the information in those submissions. Based on its adjustments to information in submissions, the Department may adjust the CO<sub>2</sub> allowances in a source's compliance account by deducting or transferring allowances, as necessary.

### Allowance Distribution

The proposed new rules specify the procedures for distributing the State's CO<sub>2</sub> allowances through auction (N.J.A.C. 7:27C-11), direct sale (N.J.A.C. 7:27C-5.5), and retirement (N.J.A.C. 7:27C-5.3), as appropriate, as described below.

Historically, cap-and-trade programs have allocated allowances directly to regulated emissions sources. Instead of allocating all of the allowances directly to electric generators at no cost, however, the Department proposes auctioning or selling the majority of CO<sub>2</sub> allowances, primarily because the CO<sub>2</sub> Budget Trading Program is being implemented in a region with competitive wholesale electricity markets. In a competitive wholesale electricity market, electric generators, by factoring the market price of CO<sub>2</sub> allowances into the price they bid in the wholesale electricity market, pass on the market value of CO<sub>2</sub> allowances to the wholesale market price of electricity. All allowances have a market value, since they can be traded to other parties. When a source generates electricity, it must use allowances and, therefore, it expends an asset. Consequently, the use of even freely allocated allowances has an "opportunity cost," since the source foregoes the revenue it could obtain from selling the allowance. Given the market context in which the CO<sub>2</sub> Budget Trading Program operates, an

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allocation approach that includes the auctioning of the majority of CO<sub>2</sub> allowances is warranted.

The auction of allowances is governed by proposed N.J.A.C. 7:27C-11, CO<sub>2</sub> Allowance Auctions.

Proposed N.J.A.C. 7:27C-5.1, New Jersey CO<sub>2</sub> Budget Trading Program base budget, establishes the annual CO<sub>2</sub> emissions base budget for New Jersey and the declining CO<sub>2</sub> emissions base budgets for the allocation years 2020 and beyond. Proposed N.J.A.C. 7:27C-5.2, CO<sub>2</sub> allowance allocations, provides for the allocation of CO<sub>2</sub> allowances representing up to 100 percent of the annual CO<sub>2</sub> emissions base budget to the consumer benefit account, the mechanics for distributing or retiring CO<sub>2</sub> allowances from such accounts, and the process for awarding certain CO<sub>2</sub> allowances to CO<sub>2</sub> budget sources. This also includes the allocation of cost containment reserve (CCR) allowances and the conversion and transfer of allowances into an account established for emission control reserve (ECR) allowances, discussed below. It also addresses setting aside CO<sub>2</sub> allowances to a general account to be available for direct sale to facilities eligible to purchase these allowances pursuant to proposed N.J.A.C. 7:27C-5.5, discussed below.

The proposed rule at N.J.A.C. 7:27C-5.2(h) through (j) provides for an adjustment to the base budget over a five-year period, 2021 through 2025, to account for a potentially high number of banked allowances, which could adversely affect the integrity of the CO<sub>2</sub> allowance market. This adjustment is consistent with the Model Rule, which provides for a series of adjustments to the regional CO<sub>2</sub> emissions cap or budget to address an unexpectedly high number of banked allowances. The Model Rule contains language to address the private banking of allowances through three adjustments to the regional emissions budget, two of which the participating states have already effectuated. One distinct budget adjustment

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remains. The Model Rule's Third Adjustment for Banked Allowances would reduce the annual base budget for allocation years 2021 through 2025, by 100 percent of the pre-2021 vintage allowances held by market participants as of the end of 2020, that are in excess of the total quantity of 2018, 2019, and 2020 emissions. The timing and algorithm for New Jersey's "third adjustment for banked allowances," defined at proposed N.J.A.C. 7:27C-1.2, is spelled out in the proposed rule at N.J.A.C. 7:27C-5.2(h) through (j). As noted above, the Department would implement this adjustment to New Jersey's base budget over the five-year period, 2021 through 2025, after the actual size of the 2020 vintage private bank has been determined.

The Department proposes to allocate CO<sub>2</sub> allowances representing 100 percent of the New Jersey CO<sub>2</sub> emissions budget for each allocation year to a consumer benefit account. CO<sub>2</sub> allowances from the account will be auctioned or sold by RGGI, Inc. to provide incentives for energy efficiency, renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies, to mitigate electricity ratepayer impacts attributable to the implementation of the CO<sub>2</sub> Budget Trading Program, and to fund the administration of the CO<sub>2</sub> Budget Trading Program and related consumer benefit programs. Moneys collected through the sale or auction of CO<sub>2</sub> allowances will be deposited in the Global Warming Solutions Fund established by the Department of the Treasury pursuant to N.J.S.A. 26:2C-50 and will be administered in accordance with N.J.S.A. 26:2C-51 and the Department's rules adopted pursuant to N.J.S.A. 26:2C-52.

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### *CO<sub>2</sub> Budget Trading Program allowance auction*

The CO<sub>2</sub> Budget Trading Program requires each state to auction at least 25 percent of the CO<sub>2</sub> allowances allocated to it each year, otherwise referred to as the state's annual CO<sub>2</sub> emissions budget. New Jersey will auction up to 100 percent of the CO<sub>2</sub> allowances in its annual CO<sub>2</sub> emissions budget, less any CO<sub>2</sub> allowances sold directly to certain CO<sub>2</sub> budget units (see "Fixed-Price Allowance Sales") or retired to reflect an adjusted compliance obligation of certain other CO<sub>2</sub> budget units (see "Retirement of Allowances for Cogeneration Units" below). The proposed procedures and requirements at new N.J.A.C. 7:27C-11 are consistent with the statutory requirements at N.J.S.A 26:2C-47. Revenue from the auction of allowances will be credited to the Global Warming Solutions Fund, established in accordance with N.J.S.A. 26:2C-50.

Proposed N.J.A.C. 7:27C-5.4 provides the timing for the sale or auction of CO<sub>2</sub> allowances from the consumer benefit account. No later than December 31 of the corresponding calendar year, the Department will make all CO<sub>2</sub> allowances for an allocation year held in the account available for auction or direct sale. All of these CO<sub>2</sub> allowances will be available for auction by RGGI, Inc., except those CO<sub>2</sub> allowances sold directly to a CO<sub>2</sub> budget source that is a certified dispatch agreement facility. The Department may retire any CO<sub>2</sub> allowances that have not been sold or distributed at the end of each control period.

The proposed rules relating to the auction of CO<sub>2</sub> allowances at N.J.A.C. 7:27C-11, CO<sub>2</sub> Allowance Auctions, are consistent with the statutory requirements at N.J.S.A. 26:2C-47, as well as the auction rules promulgated by other participating states. Proposed N.J.A.C. 7:27C-1.2, Definitions, provides the definitions of proposed auction-related terms, "ascending price,

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multiple-round auction,” “beneficial interest,” “bidder,” “CO<sub>2</sub> allowance auction” or “auction,” “CO<sub>2</sub> allowance auction website,” “descending price, multiple-round auction,” “discriminatory price, sealed-bid auction,” “minimum reserve price,” “notice of CO<sub>2</sub> allowance auction,” “qualified participant,” “reserve price,” “uniform-price, sealed-bid auction,” “undistributed CO<sub>2</sub> allowances,” and “unsold CO<sub>2</sub> allowance.”

Proposed N.J.A.C. 7:27C-11.1, Auction of CO<sub>2</sub> allowances, outlines the general process for the auctioning of CO<sub>2</sub> allowances. The Department intends to administer CO<sub>2</sub> allowance auctions in cooperation with the other participating states, resulting in a single, regional auction for CO<sub>2</sub> allowances. As discussed above, RGGI, Inc. will act on behalf of and as agent for New Jersey and the other participating states in conducting these auctions, as authorized under proposed N.J.A.C. 7:27C-11.1. The proposed rule allows the Department to delegate implementation and administrative support functions for conducting any CO<sub>2</sub> allowance auction, alternately referred to as an “auction,” to a qualified agent, subject to the direction and oversight of the Department; accordingly, references to the Department in this subchapter are intended to refer also to the agent acting on behalf of the Department in connection with the CO<sub>2</sub> allowance auctions. RGGI, Inc. is a non-profit corporation created to support development and implementation of RGGI, including implementation of a platform to auction CO<sub>2</sub> allowances. The Department may conduct a New Jersey-specific auction if there is no multi-state auction that can provide the desired benefits to the State.

Proposed N.J.A.C. 7:27C-11.2, Auction format, which is based on the RGGI Model Rule, provides several auction formats that may be employed when auctioning CO<sub>2</sub> allowances. One such format is the sealed-bid, uniform price auction, open to all qualified participants and

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resulting in a single quarterly clearing price, which has been the format of the RGGI CO<sub>2</sub> allowance auctions. Regardless of the auction format, CO<sub>2</sub> allowances will be sold in lots of 1,000, unless the volume of CO<sub>2</sub> allowances auctioned requires an individual lot size smaller than 1,000, such as when the number of CO<sub>2</sub> allowances auctioned is not a multiple of 1,000.

Each year, the Department will populate a CO<sub>2</sub> allowance tracking system (COATS) account known as an “origination account” with allowances equal to New Jersey’s annual base budget for that year. As provided in proposed N.J.A.C. 7:27C-11.3, by the end of each control period, the initial control period, and each interim control period, the Department will make CO<sub>2</sub> allowances available for auction, by moving CO<sub>2</sub> allowances to the COATS account known as the “consumer benefit account” (referred to by some RGGI states as the auction account). The number of allowances available for auction is the number of CO<sub>2</sub> allowances in the consumer benefit account that are attributable to the allocation years that fall within that control period, less any CO<sub>2</sub> allowances allocated to a “set-aside account,” defined at N.J.A.C. 7:27C-1.2 to refer to the “fixed price contract set-aside account” established to make CO<sub>2</sub> allowances be available for direct sale to a CO<sub>2</sub> budget source that is a certified dispatch agreement facility, and the “cogeneration set-aside account,” established to make CO<sub>2</sub> allowances available to adjust the compliance obligation of a cogeneration unit, discussed below.

As noted above, in each auction, the Department will make available for sale CO<sub>2</sub> allowances allocated for the current control period. The Department may also make available for sale CO<sub>2</sub> allowances allocated for a future control period. The Department will determine whether to include in the auction CO<sub>2</sub> allowances for a future control period, and the number

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of any such allowances, as needed to ensure the availability of sufficient allowances to protect the financial stability of CO<sub>2</sub> budget sources in New Jersey, as provided in proposed N.J.A.C.

7:27C-11.3.

Prior to each auction the Department will establish the lowest price for which CO<sub>2</sub> allowances will be sold in that auction, in order to ensure the proper functioning of CO<sub>2</sub> allowance auctions and mitigate the potential for collusive behavior by auction participants. This price is referred to as the “reserve price,” as defined at proposed N.J.A.C. 7:27C-1.2. The use of a reserve price is common in auctions, including those auctions held by the Federal government upon which the RGGI auctions are based. For those auctions that are held in coordination with other participating states (as the Department anticipates most of its CO<sub>2</sub> allowance auctions will be), the participating states establish a reserve price specific to that auction. The reserve price is not to be confused with the “minimum reserve price,” sometimes referred to in auctions as the “floor” price, which is the price the participating states established as that below which CO<sub>2</sub> allowances will not be sold under any circumstances. The participating states have established the minimum reserve price at \$2.32 per CO<sub>2</sub> allowance for 2020, the year of the first auction in which New Jersey will participate, as set forth in the definition of “minimum reserve price” at proposed N.J.A.C. 7:27C-1.2. The minimum reserve price will increase every year by 2.5 percent, as provided in the RGGI Model Rule. For each CO<sub>2</sub> allowance auction, the reserve price will be either the “minimum reserve price,” or the (higher) cost containment reserve (CCR) trigger price, discussed further below.

Prior to each auction, the Department will provide a notice in accordance with proposed N.J.A.C. 7:27-11.5, Auction calendar and notice, no later than 45 days before the date of a

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scheduled auction. The notice will include information about the time and location of the auction (such as the Internet address for an online auction), as well as other information, procedures, and requirements, such as auction format, number of CO<sub>2</sub> allowances to be offered, auction procedures, participation requirements, type of financial security required to be submitted by participants, bid limits applicable to participants or groups of participants, instructions for applying to participate, and identification of a contact for further information.

The notice will also reflect the categories of eligible bidders for a specific upcoming CO<sub>2</sub> allowance auction. Proposed N.J.A.C. 7:27C-11.7 identifies who is eligible to participate in auctions, generally; however, a specific auction may be limited to certain categories of participants. Owners and operators of CO<sub>2</sub> budget units located in New Jersey comprise a category that is always eligible to participate in a CO<sub>2</sub> allowance auction, whatever other categories may be included. The other proposed categories that are among those that may be eligible for a particular auction are an owner or operator of a CO<sub>2</sub> budget unit located in a participating state, and any other market participants as may be specified in the auction notice.

After the auction is concluded, proposed N.J.A.C. 7:27C-11.12, Approval of auction results, provides that the Department will approve or disapprove the results of the CO<sub>2</sub> allowance auction, based on an evaluation, in consultation with an independent monitor, of whether the auction was conducted in accordance with the procedures and requirements established for that auction, and whether there was any indication of collusive behavior among auction participants or attempts at market manipulation that impacted the results of the auction. After the approval of the auction results and the settlement of financial transactions, the Department will award CO<sub>2</sub> allowances to the winning bidders in an amount equal to the

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number of allowances represented in each bidder's winning bid(s), pursuant to proposed N.J.A.C. 7:27C-11.13, Award of CO<sub>2</sub> allowances to winning bidders. The Department will allocate that number of CO<sub>2</sub> allowances to the compliance account or general account of the winning bidder. Within 10 days after the allocation, the Department will publish the auction results, as set forth in proposed N.J.A.C. 7:27C-11.14, Publication of auction results. For each auction, the Department will publish the auction clearing price and the number of CO<sub>2</sub> allowances sold at the auction.

#### *Participation in a CO<sub>2</sub> Allowance Auction*

Any compliance entity (an owner or operator of a CO<sub>2</sub> budget unit or CO<sub>2</sub> budget source located in New Jersey or other participating state) may participate in the auctions, provided the compliance entity meets auction qualification requirements and submits financial security in an approved form, as discussed at proposed N.J.A.C. 7:26C-11.8, Auction participant qualification, and 11.9, Submission of financial security. Although proposed N.J.A.C. 7:27C-11.7 identifies eight categories of entities that may submit a qualification application to the Department (a prerequisite to participating in an allowance auction), the Department may close an auction to parties other than compliance entities if market conditions warrant such limitation, in order that sufficient CO<sub>2</sub> allowances are available to compliance entities, and to ensure a well-functioning CO<sub>2</sub> allowance market.

A person interested in participating in an auction must meet the requirements of proposed N.J.A.C. 7:26C-11.6, Auction participant requirements. In addition to being a member of an eligible category of participants, the interested person must open and maintain a

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compliance account or a general account, be qualified by the Department to participate in auctions, and submit appropriate financial security to the Department. Only those who meet the above requirements will be classified as bidders and allowed to participate in a specified CO<sub>2</sub> allowance auction.

The process to become qualified and eligible to participate in a CO<sub>2</sub> allowance auction, is proposed at N.J.A.C. 7:27C-11.8, Auction participant qualification, including the requirement that any person wishing to participate in a CO<sub>2</sub> allowance auction must submit a qualification application to the Department by the deadline in the notice of the auction. Qualification application materials and other materials related to participating in an auction are available from RGGI's website at [www.rggi.org](http://www.rggi.org). As part of a qualification application, an applicant must submit information and documentation that will allow the Department to evaluate the applicant's ability and authority to execute bids and honor contractual obligations. In addition, the applicant must also submit information necessary to ensure adherence to auction requirements and procedures. A qualification application must include identification of a compliance or general account, information regarding the corporate structure of the applicant, identification of any indictment or felony convictions of any directors or officers of the applicant or any affiliate or related entity, identification of any previous or pending investigation of the applicant or any affiliate or related entity with respect to any commodity market or exchange, disclosure of any beneficial interest in CO<sub>2</sub> allowances that may be acquired by the applicant or other auction participants, and any other information that the Department may require to ensure the integrity of CO<sub>2</sub> allowance auctions.

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Prior to each auction, a qualified participant intending to bid in the upcoming auction must notify the Department through a notice of intent to bid form, also available from RGGI's auction website. The auction notice will specify the deadline for submitting this form. The notice of intent to bid form must disclose any material change to information submitted as part of a qualification application.

Proposed N.J.A.C. 7:27C-11.8 also sets forth the process for Department review and approval or denial of a qualification application, and the basis under which the Department may revoke the qualification status of a qualified participant. A qualified participant will remain qualified to participate in subsequent CO<sub>2</sub> allowance auctions, unless there has been a material change to information submitted as part of the qualification application, in which case the qualified participant must disclose the change to the Department and the qualification status will expire as of the date of such change. In such instance, the party must again submit a qualification application to become qualified to participate in CO<sub>2</sub> allowance auctions.

Qualified participants must also submit acceptable financial security prior to being approved by the Department to participate in a specific CO<sub>2</sub> allowance auction, as set forth in proposed N.J.A.C. 7:27C-11.9, Submission of financial security. Forms of acceptable financial security include a bond, cash, certified funds, or an irrevocable stand-by letter of credit. Upon receipt and approval of financial security, the Department will approve the qualified participant to bid in the specified CO<sub>2</sub> allowance auction. The purchase of CO<sub>2</sub> allowances is limited to the amount of financial security submitted by a qualified auction participant.

A qualified participant may request the return of its financial security at any time. However, the Department will not return the financial security if the Department has a current

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or pending claim to the security as a result of a failure by the bidder to abide by the requirements of proposed N.J.A.C. 7:27C-11, or a failure to pay the full amount of any submitted bid when due. If the return of financial security is requested prior to the auction, the Department will revoke its approval to bid in the specified CO<sub>2</sub> allowance auction.

As provided in the bidder limitations at proposed N.J.A.C. 7:27C-11.10, any one bidder or a group of bidders with related beneficial interests can purchase no more than 25 percent of the allowances available for sale in any one auction. “Beneficial interest” is defined at proposed N.J.A.C. 7:27C-1.2 as any profit, benefit, or advantage resulting from the ownership of a CO<sub>2</sub> allowance. Based on recent reported CO<sub>2</sub> emissions, the Department projects that the 25 percent purchase limit is significantly greater than any one CO<sub>2</sub> budget source will need. In this way, the Department intends that the allowances from any one auction are divided among several participants, rather than purchased by a single bidder or related group of bidders. The requirements for submitting bids are set forth in proposed N.J.A.C. 7:27C-11.11, Bid submittal requirements. All bids must be submitted in a form and manner prescribed by the Department, which the Department will make available on the CO<sub>2</sub> allowance auction website. A submitted bid is considered a binding offer to purchase CO<sub>2</sub> allowances.

#### Fixed-Price Allowance Sales

Consistent with the statutory requirements of N.J.S.A. 26:2C-48, proposed N.J.A.C. 7:27C-5.5, Fixed price sale of CO<sub>2</sub> allowances to a certified dispatch agreement facility, provides for the annual direct sale of CO<sub>2</sub> allowances at a price of \$2.00 per allowance to CO<sub>2</sub> budget sources located in New Jersey that meet the criteria of a “dispatch agreement facility.” A

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“dispatch agreement facility,” as defined at proposed N.J.A.C. 7:27C-1.2 and proposed N.J.A.C. 7:27C-5.5(b) is a CO<sub>2</sub> budget source that is a cogeneration unit or a facility that has a heat rate of less than 8,100 Btu per kWh and is subject to a power purchase agreement with certain provisions, including an inability of the owner or operator to pass on CO<sub>2</sub> allowance costs to the power purchaser and the ability of the power purchaser to control the dispatch of the CO<sub>2</sub> budget source. Revenue from this “fixed price” sale of allowances will be credited to the Global Warming Solutions Fund established pursuant to N.J.S.A. 26:2C-50. The terms “cogeneration unit” and “certified dispatch agreement facility,” which are used in connection with eligibility to receive a fixed-price sale offer of CO<sub>2</sub> allowances, and the term “British thermal unit or Btu” are also defined at N.J.A.C. 7:27C-1.2. The definition of “cogeneration unit” is taken from the RGGI Model Rule.

To be eligible to receive a fixed-price CO<sub>2</sub> allowance sale offer from the Department, the owner or operator of a dispatch agreement facility must certify by affidavit that the CO<sub>2</sub> budget source meets the criteria of a dispatch agreement facility. Any signatory who knowingly gives or makes false or misleading information or statements will be subject to penalties, including statutory penalties outlined at N.J.S.A. 26:2C-49.e; moreover, the facility will no longer be considered a certified dispatch agreement facility. The owner or operator must provide the Department with on-site access to any information required by the Department to determine the validity of the information supplied with the certifying affidavit and must submit a supplemental affidavit if there is any material change to information contained in the original affidavit. Once the Department receives the affidavit, it will deem the CO<sub>2</sub> budget source a

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certified dispatch agreement facility that is eligible to receive a fixed-price sale offer of CO<sub>2</sub> allowances.

Using reported emissions data, the Department will determine the average annual CO<sub>2</sub> emissions for the certified dispatch agreement facility during the most recent three-year period for which CO<sub>2</sub> emissions data is available. Based upon those emissions, the Department will offer for sale a number of CO<sub>2</sub> allowances for a fixed price of \$2.00 per CO<sub>2</sub> allowance. Thereafter, the Department will publish the procedure for the sale at least 45 days prior to making the offer. The proposed rule establishes the contents of the required notice.

The CO<sub>2</sub> authorized account representative for the certified dispatch agreement facility must notify the Department by the deadline specified in the published notice how many, if any, of the offered CO<sub>2</sub> allowances the representative intends to purchase. After the sale is completed, the Department will allocate that number of allowances to the certified dispatch agreement facility's compliance account.

If, after the Department has deducted allowances at the end of a control period, there are any CO<sub>2</sub> allowances remaining in the compliance account of a certified dispatch agreement facility, the Department will transfer those allowances to the consumer benefit account, from which they will be available for auction.

The Department anticipates that two CO<sub>2</sub> budget sources in New Jersey are likely to meet the criteria of a dispatch agreement facility. In 2017, these units accounted for 10 percent of the CO<sub>2</sub> emissions from sources that would be subject to the CO<sub>2</sub> Budget Trading Program.

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### Adjustment of compliance obligation for cogeneration units

Cogeneration units are electric-generating units that supply thermal energy (steam or hot water) to an industrial facility. This provides an environmental benefit to New Jersey, since such an industrial facility would otherwise have to obtain that energy/heat from another, higher-emitting on-site source. Therefore, the Department seeks to encourage cogeneration arrangements when feasible. More cogeneration is also the goal of the State's 2011 Energy Master Plan (EMP), which has a goal of 1,500 MWs that has not yet been achieved. See New Jersey Energy Master Plan, New Jersey Board of Public Utilities, December 6, 2011, pp 84 and 85, and an updated discussion in the New Jersey Energy Master Plan Update dated December 2015, New Jersey Board of Public Utilities, New Jersey Department of Environmental Protection, pp 6 and 12 and a discussion of 2011 EMP Plan for Action, pages 16, 19, and 20. Consistent with the RGGI Model Rule, New Jersey can employ mechanisms to encourage specific actions or to provide assistance where the RGGI requirements could cause an undue economic hardship. For example, proposed N.J.A.C. 7:27C-5.5, Fixed-price sale of CO<sub>2</sub> allowances to a certified dispatch agreement facility, discussed above, provides that the Department will make allowances available for a fixed price of \$2.00 to certain facilities that are parties to a power purchase agreement. The reduction of the compliance obligation of a cogeneration unit, is another example. As provided at proposed N.J.A.C. 7:27C-5.3, Retirement of CO<sub>2</sub> allowances on behalf of cogeneration units, the number of allowances needed for a cogeneration unit to comply with CO<sub>2</sub> Budget Trading Program requirements is reduced by an amount representing the CO<sub>2</sub> emissions associated with their steam and electric production, not including that supplied to a regional electric grid.

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Without this proposed compliance obligation adjustment available to existing cogeneration units, compliance with the CO<sub>2</sub> Budget Trading Program could represent an undue economic hardship and disincentive to continue the cogeneration arrangement. Because a cogeneration unit subject to the CO<sub>2</sub> Budget Trading Program requirements would have to internalize the cost of CO<sub>2</sub> allowances, industrial facilities that are partnered with cogeneration units that are subject to CO<sub>2</sub> Budget Trading Program requirements could incur a disproportionate increase in electric costs compared to industrial facilities that purchase electricity from the electric grid. Consequently, the Department proposes to reward cogeneration by reducing the compliance obligation in an amount equal to all CO<sub>2</sub> emissions from the useful heat provided to and used by an onsite or contiguous facility and the CO<sub>2</sub> emissions associated with the electricity production supplied directly to a partner facility. CO<sub>2</sub> emissions associated with electric production provided to any electric grid (for example, PJM or NYISO) would not be included in this reduction. Eligible cogeneration units will be able to receive this reduction in the number of CO<sub>2</sub> allowances required for compliance for each allocation year. The Department will retire an equivalent number of CO<sub>2</sub> allowances from the “cogeneration set-aside account” established for this purpose, as provided at proposed N.J.A.C. 7:27C-5.3.

In order to receive the compliance obligation adjustment for which a cogeneration unit is eligible, the cogeneration unit’s CO<sub>2</sub> authorized account representative must submit an application by March 30 of the year following the allocation year for the requested adjustment. The applicant must demonstrate that the CO<sub>2</sub> budget unit meets the requirements to be considered a cogeneration unit, identify the compliance account for the CO<sub>2</sub> budget unit and

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the allocation year for which a request is being made, specify the amount of adjustment requested, and provide the calculations and supporting data used to determine the same. The proposed rule provides that no adjustment will be made to the compliance obligation of a CO<sub>2</sub> budget unit for which the unit's CO<sub>2</sub> authorized account representative has accepted a fixed-price sale offer from the Department for the calendar year in question. Therefore, if the CO<sub>2</sub> budget unit has received the benefit of a fixed-price sale of allowances under proposed N.J.A.C. 7:27C-5.5, it is not eligible under proposed N.J.A.C. 7:27C-5.3.

#### Cost Containment Reserve (CCR) and Emissions Containment Reserve (ECR)

In most market-based programs, such as RGGI, prices are uncertain and depend on factors that affect the demand for the fixed quantity of available emission allowances. Accordingly, the proposed rules include cost controls that provide greater predictability and stability. Demand for CO<sub>2</sub> allowances may decrease due to substantial declines in the price of natural gas, reduced reliance on coal-fired generation, uncertainty about electricity demand growth, uncertainty over the continued operation of the nuclear fleet, and downward pressure on allowance prices due to policies supportive of renewable technologies, as well as programs that promote energy efficiency.

Uncertainty about future regulatory changes directed at CO<sub>2</sub> emissions is a factor tending to raise allowance cost. For example, in the CO<sub>2</sub> allowance auctions held when New Jersey was no longer a participating state, the price for CO<sub>2</sub> allowances surged beginning in 2013, when the EPA started to formulate the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, commonly referred to as the Clean Power

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Plan, to regulate CO<sub>2</sub> emissions from the electricity sector under the Clean Air Act. In anticipation of the EPA's regulations and the potential role of RGGI allowances in Clean Power Plan compliance, demand for CO<sub>2</sub> allowances increased and clearing prices rose to a level high enough to trigger cost controls in 2014 and 2015.

The proposed rules include three mechanisms provided in the RGGI Model Rule that are intended to address too-low or too-high allowance prices that would adversely affect the program. To address allowance prices that would otherwise be too low, the RGGI program includes a minimum reserve price that constitutes a price floor in the allowance auction, discussed above, and an emissions containment reserve (ECR), discussed in detail below, which makes the supply of allowances entering the market more responsive to supply and demand in the market if emission reduction costs are lower than expected.

To address allowance prices that are too high, proposed N.J.A.C. 7:27C-5.2 provides for a cost containment reserve (CCR) that holds in reserve a number of allowances per year above the regional CO<sub>2</sub> budget allowance cap. This allowance is referred to as a "CO<sub>2</sub> cost containment reserve allowance" or "CCR allowance." Some or all of which would be made available for sale if allowance prices exceed predefined price levels, referred to as the "CO<sub>2</sub> cost containment reserve trigger price" or the "CCR trigger price." The RGGI Model Rule establishes the CCR trigger price at \$10.00 per CO<sub>2</sub> allowance for calendar year 2017, and provides that the price will rise by 2.5 percent per year through 2020, with up to 10 million allowances becoming available each year. After 2020, the trajectory of the CCR size and trigger price will change. The CCR trigger price for 2021 is \$13.00 and will increase by seven percent per year thereafter. The

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prices for the allowances are provided in the definition of “CO<sub>2</sub> cost containment reserve trigger price” or “CCR trigger price” at proposed N.J.A.C. 7:27C-1.2.

The CCR is set at 10 percent of the regional CO<sub>2</sub> budget allowance cap each year. The quantity of CCR allowances available for withdrawal each year will be reduced from 10 million to 10 percent of the cap, which in 2021 will be 7.5 million, and will be further reduced in 2030 to 5.5 million. The CCR is replenished at the start of each calendar year. When the supply of CO<sub>2</sub> CCR allowances is depleted in any calendar year, no additional CO<sub>2</sub> CCR allowances will be sold that year in the remaining quarterly auctions. For example, in 2021, if the price of a CO<sub>2</sub> allowance reaches \$13.00, each participating state will make additional allowances available, up to the maximum number of CCR allowances that the state has available for that year. The resulting increase in the availability of allowances is intended to result in a reduced price. The size of the regional CO<sub>2</sub> budget allowance cap and the reductions are discussed on RGGI’s website at [www.rggi.org](http://www.rggi.org).

In contrast, if in any auction the price of CO<sub>2</sub> allowances falls below the ECR trigger price for the auction year, the participating RGGI states will withhold allowances from circulation to secure additional emissions reductions. This allowance is referred to as a “CO<sub>2</sub> emissions containment reserve allowance” or “ECR allowance.” The Model Rule provides for an annual ECR allowance withholding limit of 10 percent of the base budgets of states implementing the ECR. The RGGI Model Rule allows each participating state to decide whether to include the ECR in that state’s rules; the RGGI Model Rule establishes the ECR trigger price and ECR allowance withholding limit. The ECR trigger price is \$6.00 per ton in 2021, with annual increases of seven percent; therefore, if, for example, the auction price in 2021 is less than the ECR trigger price of

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\$6.00 per ton, the Department will withhold allowances from circulation. The restriction in supply of allowances is intended to result in an increase in the price. The ECR trigger prices are provided in the definition of “CO<sub>2</sub> emissions containment reserve trigger price” or “ECR trigger price” at proposed N.J.A.C. 7:27C-1.2.

The minimum reserve price, reserve price, CCR, and ECR requirements apply to every CO<sub>2</sub> allowance auction; information regarding each is reflected in the auction notice, as set forth in proposed N.J.A.C. 7:27C-9.1, General requirements. CO<sub>2</sub> CCR allowances will be sold (the sale is “triggered”) only when demand for allowances above the CCR trigger price exceeds the supply, up to and including the number of CO<sub>2</sub> CCR allowances in the New Jersey auction account for that auction. If the sale of CO<sub>2</sub> CCR allowances is triggered, the CCR trigger price becomes the reserve price, meaning no allowances will be sold for less than that price. If the sale of CO<sub>2</sub> CCR allowances is not triggered, the reserve price for the auction will be the minimum reserve price, discussed above. Auction of CO<sub>2</sub> CCR and ECR allowances is governed by proposed N.J.A.C. 7:27C-9, Auction of CCR and ECR Allowances.

## Emissions Monitoring

### *General Requirements*

The CO<sub>2</sub> Budget Trading Program requires the owners and operators and CO<sub>2</sub> authorized account representatives of each CO<sub>2</sub> budget unit to install and certify monitoring systems and collect, record, quality-assure, and report data necessary to quantify CO<sub>2</sub> mass emissions from that unit. The emissions monitoring and reporting provisions rely, in large part, on the monitoring provisions established by the EPA at 40 CFR Part 75 and contain many specific

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references to these Federal provisions, which are incorporated by reference, as applicable.

These requirements are set forth in proposed N.J.A.C. 7:27C-8, Monitoring, Recordkeeping, and Reporting.

Most CO<sub>2</sub> budget sources are subject to the Federal Acid Rain Program, 42 U.S.C. §§ 7651 et seq. (Acid Rain Program), and 40 CFR Parts 72 through 78. “Acid Rain Program” is defined at proposed N.J.A.C. 7:27C-1.2. Those CO<sub>2</sub> budget sources that are subject to the Acid Rain Program are already required to monitor, record, and report CO<sub>2</sub> mass emissions annually. Those sources subject to CO<sub>2</sub> Budget Trading Program requirements that are not Acid Rain sources are subject to the CSAPR NO<sub>x</sub> and SO<sub>2</sub> trading programs, 40 CFR Part 97 and 40 CFR 52.38 and 39, which require the annual reporting of mass emissions of SO<sub>2</sub> and NO<sub>x</sub>. Since the equipment necessary to monitor emissions of SO<sub>2</sub> and NO<sub>x</sub> and the data collected to support the monitoring of such emissions can also be utilized to monitor CO<sub>2</sub> mass emissions, CO<sub>2</sub> budget sources will need to make only minor modifications to existing monitoring systems in order to monitor CO<sub>2</sub> emissions. 40 CFR Part 75 provides significant flexibility to sources in determining the best applicable monitoring approach, depending on the characteristics of the source and its operating profile.

In addition to those requirements specifically set forth in proposed N.J.A.C. 7:27C-8, the proposed new rules apply the Federal emissions monitoring and reporting rules at 40 CFR Part 75 in such a way as to address the monitoring, recordkeeping, and reporting of CO<sub>2</sub> emissions for the purposes of the CO<sub>2</sub> Budget Trading Program. For the purposes of complying with proposed N.J.A.C. 7:27C-8, proposed N.J.A.C. 7:27C-8.1, General requirements, applies the definitions in proposed N.J.A.C. 7:27C-1.2, as well as the definitions at 40 CFR 72.2, to those

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Federal requirements. In addition, the terms “CO<sub>2</sub> budget unit” and “CO<sub>2</sub> authorized account representative,” replace the terms “affected unit” and “designated representative,” respectively, wherever they are used in the Federal rules at 40 CFR Part 75. Further, where the term “continuous emissions monitoring system” or “CEMS,” is used in 40 CFR Part 75, the definition of that term at N.J.A.C. 7:27C-1.2 applies. In addition, in applying the Federal requirements to units not subject to the Federal Acid Rain Program, “Department” replaces “Administrator.”

For an owner or operator of a facility that includes a CO<sub>2</sub> budget unit and one or more units that is not a CO<sub>2</sub> budget unit, and that monitors SO<sub>2</sub>, NO<sub>x</sub>, or CO<sub>2</sub> emissions pursuant to the Federal common, multiple, or bypass stack procedures, proposed N.J.A.C. 7:27C-8.1 requires the owner or operator to monitor and report CO<sub>2</sub> mass emissions from the non-CO<sub>2</sub> budget unit according to the procedures established for CO<sub>2</sub> budget units.

In installing monitoring systems in accordance with 40 CFR Part 75, however, CO<sub>2</sub> budget units must not use the equation G-1 of Appendix G, as that would require the collection of additional information that is not reported as part of a CO<sub>2</sub> budget source's quarterly emissions monitoring report and, therefore, is not replicable based on the information that the CO<sub>2</sub> budget source would otherwise submit to the Department. The owner and operator of a CO<sub>2</sub> budget unit must perform all required equipment-certification tests and record, report, and quality-assure the data from the monitoring systems.

The timing for compliance with program requirements is set at proposed N.J.A.C. 7:27C-8.1. A CO<sub>2</sub> budget unit that commences commercial operation six months or more before these rules are effective must comply with proposed N.J.A.C. 7:27C-8.1(c) by the operative date of the

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rules. A CO<sub>2</sub> budget unit that commences commercial operation less than six months before these rules are effective must comply with proposed N.J.A.C. 7:27C-8.1(c) by either six months after the rules are effective or the earlier of 90 unit-operating days or 180 calendar days after commercial operation began. The completion of construction of a new stack or of the installation of a flue after these deadlines would extend the compliance deadline to the earlier of 90 unit-operating days or 180 calendar days after emissions from the new construction or installation began.

If an owner or operator misses a compliance deadline set forth at proposed N.J.A.C. 7:27C-8.1, the owner or operator must determine, record, and report certain values required to determine CO<sub>2</sub> mass emissions, in accordance with applicable Federal missing data procedures at 40 CFR Part 75. Proposed N.J.A.C. 7:27C-8.1 also sets forth the criteria that determine which provisions in 40 CFR Part 75 apply to the CO<sub>2</sub> budget unit.

Certain CO<sub>2</sub> budget units already qualify for optional emissions calculations and reporting for low mass emissions (LME) units under the CSAPR and Acid Rain programs. The emissions levels for a gas- or oil-fired unit to meet the definition of an LME are at 40 CFR 75.19(a)(1)(i). Proposed N.J.A.C. 7:27C-8.1 requires these units to use the Federal CO<sub>2</sub> emissions calculations for LME units. A CO<sub>2</sub> budget unit that is subject to CSAPR or the Acid Rain Program but does not qualify for the optional CO<sub>2</sub> emissions calculations for LME units, cannot comply with the requirements of this subchapter by using the CO<sub>2</sub> emissions calculations for LME units. However, a CO<sub>2</sub> budget unit that is not subject to CSAPR or Acid Rain Program requirements will qualify for the optional CO<sub>2</sub> emissions calculations for LME units and can comply with the requirements of this subchapter by using the CO<sub>2</sub> emissions

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calculations for LME units if it has low annual NO<sub>x</sub> and SO<sub>2</sub> emissions (fewer than 100 tons and no more than 25 tons, respectively).

Prohibited actions are listed at proposed N.J.A.C. 7:27C-8.1. These include: use, without prior written EPA and Department approval, of any alternative to the required continuous emission monitoring systems (CEMS); failure to comply with Federal and State requirements to account for the discharge of all CO<sub>2</sub> emissions; disruption, with some exceptions, of the approved emissions monitoring system; and retirement or permanent discontinuation of an approved emissions monitoring system without the requisite replacement or scheduled replacement of the system.

In order to maintain consistency with applicable permitting requirements at N.J.A.C. 7:27-8 and 22, the general requirements also include provisions addressing the use of the monitoring system and conformance with the requirements of permits issued under N.J.A.C. 7:27-22. These provisions are based on N.J.A.C. 7:27-8.3(e) and 22.3(c), (d), and (e).

#### *Certification procedures*

Proposed N.J.A.C. 7:27C-8.2, Monitoring system certification procedures, includes deadlines and procedures for the initial certification, and, under certain circumstances, recertification of CEMS. Sources subject to the Acid Rain Program that have already certified CO<sub>2</sub> monitoring systems will not require initial certification, but may require recertification if, for example, changes to the monitoring system trigger such recertification. The proposed monitoring provisions include a method for supplying missing data, in the event that a monitoring system fails to meet quality assurance and quality control requirements.

Certification procedures at proposed N.J.A.C. 7:27C-8.2 include procedures for CEMS,

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monitoring systems excepted under 40 CFR Part 75, and monitoring systems that use the Federal LME excepted monitoring methodology. Initial certification is not required for a monitoring system previously certified in accordance with 40 CFR Part 75 that meets applicable Federal quality-assurance and quality-control requirements. Recertification is, however, still required. Upon request, the Department can apply certain EPA-approved petitions to the requirements of the CO<sub>2</sub> Budget Trading Program.

All required initial certification testing must be performed by deadlines specified at proposed N.J.A.C. 7:27C-8.1. Where the required monitoring system is installed in a location with no previously installed monitoring system, the system must be certified in accordance with the Federal requirements for initial certification and recertification procedures.

A certified monitoring system will have to be recertified if the Administrator or the Department determines that a replacement, modification, or change to the certified emissions monitoring system significantly affects the ability of the system to perform properly. Recertification is also required if the Administrator or the Department determines that a replacement, modification, or change to the flue gas-handling system or the unit's operation significantly changes the flow or concentration profile. Examples of changes that require recertification include replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

Proposed N.J.A.C. 7:27C-8.2(g) through (n) apply to both the initial certification and the recertification of monitoring systems. In the case of recertification, the provisions that refer to certification and initial certification are to be read as applying to recertification. Where the Department issues a notice of disapproval of the certification application or a notice of

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disapproval of the certification status of a monitor, the applicable Federal certification provisions must be followed, instead of those at proposed N.J.A.C. 7:27C-8.2(o).

Notice of the dates of certification is to be submitted to the Department, EPA Region 2, and the Administrator in accordance with the Department's notification requirements at proposed N.J.A.C. 7:27C-8.4; that is, in accordance with 40 CFR 75.61, the Federal requirements for notifications. A complete certification application, including all the information required in the applicable Federal rules for an initial certification or recertification application must be submitted to the Department for each monitoring system.

The Federal rules at 40 CFR 75.20(a)(3) provide for the provisional certification (or recertification) of a monitor. The Department proposes to determine the provisional certification date for a monitor in accordance with the applicable Federal provisions. The provisionally certified (or recertified) monitor can be used for no more than 120 days after the Department receives the complete certification (or recertification) application. If the Department does not invalidate the provisional certification (or recertification), the Department will consider quality-assured data during that provisional certification period to be valid.

The Department must act within 120 days after receiving a complete certification application by issuing a written notice of approval or disapproval of the certification application. If the application is complete and shows that the monitoring system meets the applicable Federal performance requirements, the Department will issue a written notice of approval. If the Department does not timely issue a notice of approval or disapproval, the monitoring system will be deemed certified, if it meets the applicable Federal performance

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requirements. As appropriate, the Department will issue a written notice of incompleteness, advising the CO<sub>2</sub> authorized account representative what information must be submitted to complete the application, and by when. If the application is not timely completed in response to this notice of incompleteness, the Department may issue a written notice of disapproval.

The Department will also issue a written notice of disapproval of any application for a monitoring system that does not meet the Federal performance requirements. The notice of disapproval invalidates any provisional certification, and invalidates the data measured and recorded by the uncertified monitoring system. The Department may also issue a notice of disapproval of the certification status of a monitor when a subsequent audit and review of the initial certification or recertification application show that the monitor should not have been certified or recertified, as provided in proposed N.J.A.C. 7:27C-8.3(b).

Proposed N.J.A.C. 7:27C-8.2 also includes the requirements for the owner or operator of a CO<sub>2</sub> budget source with a disapproved monitoring system. Within 30 unit-operating days after the notice of disapproval is issued, all failed tests or requirements must be repeated, as reflected in a submitted notification of certification retest dates and new certification application. Proposed N.J.A.C. 7:27C-8.2 also provides for the substitution of values for invalidated data during the time frame established by the relevant Federal provisions at 40 CFR Part 75.

CO<sub>2</sub> budget units that qualify as LME units and that use the excepted methodologies under 40 CFR 75.19 must satisfy the applicable Federal certification and recertification requirements. If the owner or operator of a CO<sub>2</sub> budget unit that qualifies as an LME unit elects

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to certify a fuel flow meter for heat input determinations, additional Federal certification and recertification requirements apply.

If the owner or operator of a CO<sub>2</sub> budget unit intends to use an alternative monitoring system under Subpart E of 40 CFR Part 75, the CO<sub>2</sub> authorized account representative must comply with the applicable Federal notification and application procedures of 40 CFR 75.20(f).

#### *Out-of-Control Periods*

Proposed N.J.A.C. 7:27C-8.3, Out-of-control periods, establishes the procedures to be followed when there are possible deficiencies in the operation of a monitoring system. Data must be substituted, consistent with applicable Federal procedures, for data from a monitoring system failing to meet the quality assurance and quality control requirements or data validation requirements of 40 CFR Part 75. In addition, if a field audit or an audit of information submitted to the Department and a review of the initial certification or recertification application reveal a failure to meet a performance specification or other applicable requirement, the Department or Administrator will issue a notice of disapproval of the certification status of a monitoring system, and thus revoke prospectively the certification status of the monitoring system. In such an instance, the owner or operator of a CO<sub>2</sub> budget unit is required to pursue initial certification or recertification for the monitoring system. From the time the notice of revocation is issued until subsequently approved initial certification or recertification tests are completed, the data measured and recorded by the uncertified monitoring system will not be considered valid quality-assured data.

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### *Notification Requirements*

Proposed N.J.A.C. 7:27C-8.4, Notifications, requires all written notification submitted pursuant to the requirements of proposed N.J.A.C. 7:27C-8 to comply with the notification requirements of 40 CFR 75.61, the Federal requirements for a number of notifications relating to continuous emission monitoring reporting requirements, including initial certification and recertification tests, new units and new stacks, unit shutdowns, and re-commencement of commercial operations, among others.

### *Recordkeeping and Reporting*

Proposed N.J.A.C. 7:27C-8.5, Recordkeeping and reporting, establishes the requirements for the submission of monitoring plans and quarterly reports (including compliance certifications in support of each quarterly report). In addition to complying with these recordkeeping and reporting requirements, the CO<sub>2</sub> authorized account representative must comply with the Federal NO<sub>x</sub> mass emissions recordkeeping and reporting requirements. As with the application of the Federal rules at 40 CFR Part 75 throughout the proposed subchapter, the Federal provisions are to be read within the context of measuring and recording CO<sub>2</sub> emissions.

Within 45 days after completing all required initial certification or recertification tests, the CO<sub>2</sub> authorized account representative must submit a certification or recertification application to the Department. The application must include information required under 40 CFR 75.53(g) and (h), Federal provisions relating to the required contents of a monitoring plan, and 40 CFR 75.63, the Federal provisions relating to the submission of initial certification or

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recertification applications.

The CO<sub>2</sub> authorized account representative must also submit quarterly reports in an EPA- or Department-prescribed electronic format, reflecting the CO<sub>2</sub> mass emissions data for the CO<sub>2</sub> budget unit, within 30 days after the end of the reported calendar quarter. Quarterly reporting begins with the calendar quarter beginning January 1, 2020 for units that commenced commercial operation before July 1, 2019. For units commencing commercial operation on or after July 1, 2019, reporting begins with the calendar quarter of the date of provisional certification or the calendar quarter of the deadline for initial certification, whichever is earlier.

The applicable provisions of 40 CFR Part 75, Subparts G and H (Reporting requirements and NO<sub>x</sub> mass emissions provisions, respectively) and 40 CFR 75.64 (quarterly reports) control the submission of quarterly reports, including the information to be included therein. The proposed new rules do not include the opacity and SO<sub>2</sub> provisions in Subpart G of 40 CFR Part 75.

Each submitted quarterly report must be supported by a compliance certification that includes statements to the effect that the submitted monitoring data was properly recorded and quality-assured, that substitute values for units with add-on CO<sub>2</sub> emissions controls and CO<sub>2</sub> concentration values substituted for missing data do not systematically underestimate CO<sub>2</sub> emissions, and that add-on emissions controls were operating consistent with the Federal requirements at Appendix B of 40 CFR Part 75. For a unit with add-on CO<sub>2</sub> emissions controls, the substitution of data must comply with the requirements of 40 CFR 75.34(a)(1), the Federal provisions governing the use of missing data substitution procedures in 40 CFR 75.31 through 33 by units with such add-on emission controls.

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### *Petitions*

The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is subject to an Acid Rain emissions limitation can petition the Administrator of the EPA under the Federal regulations at 40 CFR 75.66, Petitions to the Administrator, requesting approval to apply an alternative to any requirement of 40 CFR Part 75, including an alternative to a requirement concerning any additional CEMS required under the Federal common stack provisions of 40 CFR 75.72 or concerning a CO<sub>2</sub> concentration CEMS used under 40 CFR 75.71(a)(2). In addition, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is not subject to an Acid Rain emissions limitation can also petition the Administrator under the Federal regulations at 40 CFR 75.66 to apply an alternative to any requirement of 40 CFR Part 75. In all three cases, proposed N.J.A.C. 7:27C-8.6 requires the petition that is submitted to the Administrator must also be submitted to the Department. The application of any alternative to any requirement of 40 CFR Part 75 is in accordance with proposed N.J.A.C. 7:27C-8 only if the Administrator approves the petition in writing and the Department also subsequently approves the petition.

### *Monitoring and Reporting Requirements for Eligible Biomass*

Proposed N.J.A.C. 7:27C-8.7, CO<sub>2</sub> budget units that co-fire eligible biomass, provides the monitoring and reporting requirements for a CO<sub>2</sub> budget unit that co-fires eligible biomass fuel as a compliance mechanism under the CO<sub>2</sub> Budget Trading Program. Proposed N.J.A.C. 7:27C-6.9 allows a CO<sub>2</sub> budget unit that co-fires eligible biomass to deduct the CO<sub>2</sub> emissions related to the firing of such biomass fuel from the CO<sub>2</sub> budget unit's compliance obligation (the CO<sub>2</sub> budget unit's emissions limitation). This means that the CO<sub>2</sub> budget unit need not submit CO<sub>2</sub>

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allowances to the Department for CO<sub>2</sub> emissions from the co-firing of eligible biomass reported to the Department pursuant to proposed N.J.A.C. 7:27C-8.7. For a CO<sub>2</sub> budget unit that claims such a compliance deduction, the CO<sub>2</sub> authorized account representative for the CO<sub>2</sub> budget unit must submit quarterly reports to the Department that include eligible biomass fuel input, heat input from eligible biomass, and CO<sub>2</sub> emissions from the combustion of eligible biomass for the CO<sub>2</sub> budget unit during the reporting quarter, as well as additional information that supports the calculation of this reported data.

More specifically, the quarterly report must contain information regarding: each shipment of solid eligible biomass fuel fired during the quarter (total eligible biomass fuel input and “as-fired” moisture content); each type of eligible gaseous biomass fuel fired during a quarter (the total eligible biogas fuel input, and the “as-fired” biogas density and moisture content); and each distinct type of eligible biomass fuel fired during the quarter (the dry basis carbon content, dry basis higher heating value, total dry basis eligible biomass fuel input in pounds, total eligible biomass fuel heat input, in MMBtu, and a chemical analysis of the fuel, including heat content and carbon content). The quarterly report must also include the total amount of emitted CO<sub>2</sub>, in tons, and the total amount of heat input, from the firing of all eligible biomass fuel types. The quarterly report must also include a description and documentation of the monitoring technology and fuel sampling methodology used during the reporting quarter. In providing this information, the owner or operator of the CO<sub>2</sub> budget unit must use fuel sampling methods and technology consistent with those provided in the New York State Renewable Portfolio Standard Biomass Guidebook, which the Department proposes to incorporate by reference. This guidebook provides detailed biomass monitoring guidelines

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and is accepted by the participating states as providing best-practice monitoring guidance for electric generating units that co-fire biomass.

Proposed N.J.A.C. 7:27C-8.7 also provides the calculations for determining the total dry weight for each distinct eligible biomass fuel fired by a CO<sub>2</sub> budget unit, and the CO<sub>2</sub> emissions from the CO<sub>2</sub> budget unit due to the firing of eligible biomass fuel. However, if a CO<sub>2</sub> budget unit fired only eligible biomass during a reporting quarter, it must instead report the CO<sub>2</sub> emissions in accordance with proposed N.J.A.C. 7:27C-8.1 through 8.6, since it is not necessary to calculate the portion of the fuel that is eligible biomass. The rule also provides the calculations for determining the heat input to a CO<sub>2</sub> budget unit due the firing of eligible biomass.

#### *Output Data*

Proposed N.J.A.C. 7:27C-8.8, Additional requirements to provide output data, requires CO<sub>2</sub> budget units to annually report net electric output and net thermal output to the Department and provides the specific requirements for such reporting. “Net electric output” is defined at proposed N.J.A.C. 7:27C-1.2.

A CO<sub>2</sub> budget unit that participates in the wholesale electricity markets administered by either PJM or NYISO must submit to the Department the same megawatt-hour value submitted to these organizations and certify that the value reported reflects the total electrical output used to determine settlement of electricity transactions involving the CO<sub>2</sub> budget unit. A CO<sub>2</sub> budget unit that does not participate in the wholesale electricity markets administered by PJM or NYISO must report net electrical output in accordance with a monitoring plan approved by the Department, as discussed below.

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If the CO<sub>2</sub> budget unit reports gross output to the EPA Administrator, it will submit the same report that it submitted to the EPA. If the CO<sub>2</sub> budget unit does not report gross output to the EPA Administrator, it will submit information otherwise required at proposed N.J.A.C. 7:27C-8.8(g)1.

A CO<sub>2</sub> budget source that sells steam must use billing meters to determine and report net steam output. For a CO<sub>2</sub> budget source that does not use billing meters (for example, if the steam is used on-site by the company that owns the CO<sub>2</sub> budget unit) or if steam output is combined with output from a non-CO<sub>2</sub> budget unit prior to measurement by a billing meter, the CO<sub>2</sub> budget source must report net useful steam in accordance with a Department-approved output monitoring plan, as discussed below. If data for steam output is unavailable, a CO<sub>2</sub> budget source must instead report the heat input that was used to provide useful steam output, as a surrogate for steam output, in accordance with a Department-approved output monitoring plan.

Each CO<sub>2</sub> budget source must submit an output monitoring plan to the Department for approval. The output monitoring plan must include a diagram of the electrical and/or steam system, a description of each monitoring system, a description of all quality assurance and quality control activities that will be performed, and documentation of any output values that will be used as a missing data value where there may be periods of invalid data reported by the output monitoring system.

The CO<sub>2</sub> authorized account representative must certify to the Department that the output monitoring system consists entirely of billing meters or meets accuracy requirements for non-billing meters specified in this section. This certification may be submitted with the

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compliance certification submitted to the Department pursuant to proposed N.J.A.C. 7:27C-8.5(d)3 that supports the submittal of quarterly emissions monitoring reports to the Department. For billing meters, the CO<sub>2</sub> authorized account representative must certify that any output values are the same as the values that were used in billing for the output. For non-billing meters, the CO<sub>2</sub> authorized account representative must certify that the output monitoring system meets either an accuracy of within 10.0 percent of the reference value for the monitoring system as a whole (system approach to accuracy) or each component monitor of the monitoring system meets an accuracy of within 3.0 percent of the full-scale value (a component approach to accuracy), whichever is less stringent.

The owner or operator of a CO<sub>2</sub> budget source must perform certain ongoing quality assurance and quality control activities to maintain the output system. Where billing meters are used, no quality assurance and quality control activities are required beyond those already performed by the owner or operator of the CO<sub>2</sub> budget source. Non-billing meters require an initial certification and calibration, but do not require periodic recalibration unless the equipment is physically changed, but pressure and temperature transmitters accompanying an orifice plate must be periodically retested. For other types of monitoring equipment, recalibration or reverification of the meter accuracy must be performed at least once every two years, unless there is a consensus standard for such recalibration and reverification that is approved by the Department as part of the output monitoring plan for the CO<sub>2</sub> budget source. If testing of a piece of monitoring equipment shows that the output readings are not accurate to the certification values referred to above, data will remain invalid until the piece of

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equipment meets the accuracy test referenced above or is replaced with a new piece of equipment that does.

The owner or operator of a CO<sub>2</sub> budget source must retain for 10 years, the data used to monitor, determine, or calculate net electrical output and net thermal output. By March 1 of every year, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source must submit electronically (and in hard copy upon request) an annual output monitoring report that includes megawatt-hours of electricity and useful steam output for each CO<sub>2</sub> budget unit for the prior year. The CO<sub>2</sub> authorized account representative must certify in the monitoring report, his or her authority to make the submission, a personal familiarity with the statements, a belief in the overall veracity of the submitted information, and an awareness of the penalties for falsehoods in the report.

#### *Defined Terms*

The Department proposes defining at N.J.A.C. 7:27C-1.2 the following terms, used but not defined in the Model Rule, relating to the reporting requirements at N.J.A.C. 7:27C-8.1, as well as the selection of the CO<sub>2</sub> authorized account representative: “Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Annual Trading Program,” “Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Ozone Season Trading Program,” “Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 1 Trading Program,” and “Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 2 Trading Program.”

The Department also proposes at N.J.A.C. 7:27C-1.2 to define additional terms relevant to the monitoring, recordkeeping, and reporting requirements of N.J.A.C. 7:27C-8 defined in or based on the RGGI Model Rule, including: “acid rain emissions limitation,” “Administrator,” “automated data acquisition and handling system” or “DAHS,” “billing meter,” “boiler,”

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“continuous emissions monitoring system” or “CEMS,” and “monitoring system.”

## Offsets

### *Eligibility*

The award of CO<sub>2</sub> offset allowances to projects that reduce and/or sequester emissions of greenhouse gases through emissions offset projects outside the capped electric generation sector will provide greater compliance flexibility to CO<sub>2</sub> budget sources, as proposed at N.J.A.C. 7:27C-10, CO<sub>2</sub> Emissions Offset Projects. The Department will award CO<sub>2</sub> offset allowances for real, additional, verifiable, enforceable, and permanent CO<sub>2</sub>-equivalent emission reductions or carbon sequestration from CO<sub>2</sub> emissions offset projects. These CO<sub>2</sub> offset allowances can be used, pursuant to proposed N.J.A.C. 7:27C-6.9, by any CO<sub>2</sub> budget source to satisfy up to 3.3 percent of a unit’s total compliance obligation during a control period or the initial control period, and half that percentage during an interim control period.

Projects in the following three categories are eligible for CO<sub>2</sub> offset allowances: landfill methane capture and destruction; sequestration of carbon due to reforestation, improved forest management, or avoided conversion; and avoided methane emissions from agricultural manure management operations. Proposed N.J.A.C. 7:27C-10.3, General requirements, establishes the general requirements for offset projects for which the Department will award CO<sub>2</sub> offset allowances, including the timing, eligibility, and qualification requirements, geographic restrictions, and exclusions. It also addresses the timing for the allocation periods for which CO<sub>2</sub> offset allowances will be awarded, and, to facilitate compliance inspections by the Department, requires the project sponsor to provide the Department a written access

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agreement. The project sponsor must meet all the requirements of the proposed subchapter, including the requirement to establish a general account and make certain representations in the consistency application at proposed N.J.A.C. 7:27C-10.4, discussed below. The proposed new rule also provides the Department with remedies in the event of non-compliance by the project or the project sponsor. If the project does not comply with this subchapter, the Department can revoke any issued approvals. The Department can also revoke and retire CO<sub>2</sub> offset allowances where the project sponsor has not complied with this subchapter. “Project sponsor” is the sponsor of an offset project under this subchapter, as defined at N.J.A.C. 7:27C-10.2.

The proposed new rules allow for the limited eligibility of projects located outside or only partially in New Jersey. As provided in proposed N.J.A.C. 7:27C-10.3, a project that is located only partly in New Jersey will qualify to be awarded CO<sub>2</sub> offset allowances only if the majority of emissions reductions or carbon sequestration is projected to occur in New Jersey. A project that is located in a state other than New Jersey or in another United States jurisdiction can qualify for CO<sub>2</sub> offset allowances, but only if a cooperating regulatory agency in that state or jurisdiction has entered into a memorandum of understanding with counterpart agencies in the participating states to provide oversight support related to CO<sub>2</sub> emissions offset projects in that state or jurisdiction.

Eligible offset projects must go through a two-step application process that includes verification by an accredited independent verifier, discussed below, before the Department will award CO<sub>2</sub> offset allowances. The first step is a consistency determination, whereby the Department will determine whether a project meets eligibility criteria. The second step is the

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submittal of an annual monitoring and verification report, which requires the applicant to demonstrate the precise amount of greenhouse gas emissions reduced or sequestered. The consistency determination process and the monitoring and verification report requirements are discussed further below.

A CO<sub>2</sub> budget source that receives an offset allowance may emit an additional ton of CO<sub>2</sub> for each ton of CO<sub>2</sub> emission reduction achieved through an offset; accordingly, a key component of the proposed offset provisions is that the incremental greenhouse gas emissions reductions from an offset project (for which an offset allowance is issued) would not otherwise occur in the absence of the offset project. Therefore, a project is not eligible for offset allowances if the offset project is required by law or administrative or judicial order. Offset projects must also consist of activities that go beyond a business-as-usual scenario (standard market practice). Evaluating whether the activity is beyond standard market practice is difficult, since it requires an assessment of what likely would have occurred in the absence of the offset project. It may also involve an evaluation of the project developer's intent, since a project that presents an attractive investment alternative in the absence of offset allowances would not be beyond standard market practice; the project might have been undertaken anyway.

An evaluation of whether a project is likely to be economically attractive absent the revenue stream provided by an emissions offset typically involves factors, such as the identification of alternatives to the project, a barriers analysis (for example, a review of market, technology, or financial barriers), a common practice analysis, and an investment analysis (for example, a project-specific financial analysis, such as internal rate of return or net present

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value) with and without the projected revenue stream provided by offset credits. Based on this analysis, a determination is made as to whether the project, without offset credit revenue, is less financially attractive than other market options.

For similar reasons, the Department will not award CO<sub>2</sub> offset allowances to a project with an electric generation component, unless the legal rights to all credits from the project (other than CO<sub>2</sub> offset allowances) that can be used to comply with some other regulatory requirement have been transferred to the Department. In this way, the Department can ensure that the motivation for developing the offset project is not anticipated incentives to be accrued by a project through other credits that can be used for compliance with another market-based environmental regulation, such as a state renewable portfolio standard, or sold in another environmental market. The Department determined that some potential offset projects, such as landfill gas offset projects, could represent projects that are primarily driven by other incentives, unless limitations are placed on the receipt of such incentives. The proposed provisions require project sponsors to choose the purpose for which the project is initiated, by relinquishing the rights to other credits, such as renewable energy credits, that could be accrued by an offset project and sold in another environmental credit market.

With the exception of an award of offset allowances to a forest project, the proposed rules limit the award of CO<sub>2</sub> offset allowances to a project that was commenced on or after December 20, 2005, which is the date the original seven participating RGGI states signed the RGGI Memorandum of Understanding. For a forest offset project, the Department will award CO<sub>2</sub> offset allowances only for a project that was commenced on or after January 1, 2014, which is the effective date that the participating states expanded the forest offset category to

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include reforestation, improved forest management, and avoided conversion. Projects that began prior to the relevant dates are ineligible for offset allowances because they cannot have been established to reduce CO<sub>2</sub> emissions under the CO<sub>2</sub> Budget Trading Program; the program either did not yet exist or, as to the forest offset category, did not yet recognize such offsets.

### *Consistency Determination*

To qualify for the award of CO<sub>2</sub> offset allowances, an eligible project must obtain the Department's determination that it is consistent with the requirements of proposed N.J.A.C. 7:27C-10. Proposed N.J.A.C. 7:27C-10.4, Consistency application process, establishes how, when, and by whom a consistency application for an offset project is submitted and addresses the Department's consistency application review process and the consistency determination process. The Department will post consistency application materials on the Department's website. The consistency determination process begins with the establishment of a general account under proposed N.J.A.C. 7:27C-6.1, 6.2 and 6.3, discussed below, including the designation of a CO<sub>2</sub> authorized account representative who will be responsible for all submissions to the Department related to the offset project. The Department will deny any consistency application that misses the submission deadline set forth at proposed N.J.A.C. 7:27C-10.4, which, for a forest offset project, is within one year of the commencement of the project. For an offset project other than a forest offset project, the application deadline is six months after commencement of the project.

The Department will avoid any duplication between its review of a consistency application and that performed by another participating state by not accepting a consistency

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application for an offset project already submitted in another participating state, unless the other participating state has rejected the consistency application on the grounds that more of the projected benefits will occur in New Jersey than in any other participating state.

The required elements of the consistency application are set forth at proposed N.J.A.C. 7:27C-10.4. These include information identifying the project sponsor and information about the offset project, such as a description of the project, demonstration that the project meets all applicable requirements of the proposed new subchapter, demonstration of compliance with the regulatory requirements of the cooperating regulatory agency in a non-participating state, if applicable, the emissions baseline, and an explanation of the quantification, monitoring, and verification methods to be employed in demonstrating the emissions reduction, avoided emissions, or carbon sequestration from the offset project.

In addition, the project sponsor must certify in the consistency application an understanding of the requirements governing the application process and that the project sponsor holds the legal rights to the project or acts on behalf of a person holding these rights. As part of such certification, the project sponsor also authorizes the Department to audit the project and enter the physical location of the offset project. The consistency application also includes a certification of compliance by the project sponsor for offset projects for which the sponsor has received CO<sub>2</sub> offset allowances under this subchapter or the corresponding rules of another participating state. The sponsor of an offset project must also disclose any other voluntary or mandatory program to which greenhouse gas emissions data related to the offset project has been previously reported or will be reported.

An accredited independent verifier must review the consistency application. He or she

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must sign a verification report and certification that the verifier has evaluated the information submitted to demonstrate that the offset project meets the applicable requirements of the proposed new subchapter, including the adequacy and validity of information submitted to demonstrate the project's emissions baseline, the adequacy of the project's monitoring and verification plan, and any other supporting material for which the Department may require the evaluation of an accredited independent verifier in order to fully review whether the offset project meets the applicable requirements of the proposed subchapter. The accreditation of independent verifiers is addressed at proposed N.J.A.C. 7:27C-10.8, discussed below.

Proposed N.J.A.C. 7:27C-10.4 also provides that, within 30 days of receipt of the application, the Department will determine whether the consistency application provides all the required information in the required format. Once it makes this completeness determination, the Department will make a consistency determination, and so notify the project sponsor within 90 days. A consistency determination represents a determination by the Department that the offset project is consistent with proposed N.J.A.C. 7:27C-10.3 and 10.4 and the applicable offset project standards at proposed N.J.A.C. 7:27C-10.5, 10.6, and 10.7. If an offset project does not meet the requirements, the Department will let the project sponsor know how the project is deficient.

### *Independent Verifiers*

As discussed above, certain documents that project sponsors must submit require certification by an accredited independent verifier. Proposed N.J.A.C. 7:27C-10.8, Accreditation of independent verifiers, establishes the process for those seeking accreditation; accreditation

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is for a period of three years. Rather than refer repeatedly to “an independent verifier accredited pursuant to section XX-10.6” as is done in the RGGI Model Rule, the Department proposes to define “accredited independent verifier” at N.J.A.C. 7:27C-10.2 as shorthand for that concept.

The accreditation process begins with the independent verifier submitting an application that includes identifying information, documentation of the knowledge, experience, and training necessary to properly perform the required functions, and other information regarding professional liability insurance and management protocols to address potential conflicts of interest. Once a complete application for accreditation has been submitted, the Department must either approve or deny the application within 45 days. An independent verifier accredited in another participating state may be deemed to be accredited in New Jersey.

In order to address conflicts of interest related to an independent verifier, both actual and potential, the proposed rule requires disclosure of information by both prospective and accredited independent verifiers that would allow the Department to identify any such conflict of interest, or potential therefor, with respect to an independent verifier and an offset project, offset project developer, or project sponsor, and obligate an accredited independent verifier to continue to disclose any such facts or circumstances on a continuing basis. Determination of such an actual or potential conflict of interest is grounds for the rejection of a verification report and certification submitted as part of a consistency application or of a monitoring and verification report. Grounds for revocation of an independent verifier’s accreditation are

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those that throw into question the ability of the accredited verifier to properly perform verification responsibilities.

#### *Offset project allocation periods*

Proposed N.J.A.C. 7:27C-10.3 provides that an award of offset allowances is for an initial 10-year allocation period, except in the case of a forest offset project, for which the initial allocation period is 25 years. An offset project is eligible for an award of CO<sub>2</sub> offset allowances for a subsequent allocation period if the project sponsor submits a new consistency application before the initial allocation period expires, and the Department issues a consistency determination. Although a forest offset project may qualify for offset allowances for more than two allocation periods, a non-forest offset project will not.

The 10-year and 25-year allocation periods reflect the fact that market conditions and technical practices and equipment change over time. The Department, in consultation with the other participating states, determined that a non-forest offset project should be re-evaluated after an initial 10-year period to determine whether the project continues to qualify as beyond what is standard in the market. An offset project that qualifies for an initial allocation period may not qualify for a subsequent allocation period, if the technology and practices in the initial project have become standard. Therefore, the project manager must submit a new consistency application. A non-forest offset project that has been awarded offset allocations for two consecutive 10-year allocation periods is not eligible for further offset allocations, because after 20 years, the non-forest offset project should no longer be considered above and beyond standard market practice. The technology and practices in common use will have likely

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advanced to the point that the project no longer exceeds what is otherwise standard in the market. The Department and other participating states treat forest offset projects differently, allowing a longer allocation period and more than one subsequent allocation period, because the forest offset projects involve land use actions that typically occur over longer time horizons.

Requirements specific to each of the three categories of projects, including provisions specifying the determination of offset project emissions or sequestration baselines, the quantification of emissions reduction or net carbon sequestered, and monitoring and verification requirements, are at proposed N.J.A.C. 7:27C-10.5, 10.6, and 10.7 and are discussed below. The Department intends through these requirements to ensure that the CO<sub>2</sub> offset allowances it awards represent CO<sub>2</sub>-equivalent emissions reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent, as stated in proposed N.J.A.C. 7:27C-10.1, Purpose.

#### *Awarding of Offset Allowances*

Proposed N.J.A.C. 7:27C-10.9 establishes the Department's procedure for awarding CO<sub>2</sub> offset allowances. The Department will award CO<sub>2</sub> offset allowances only after it has issued a consistency determination and approved the relevant monitoring and verification report. The proposed rule establishes the timing for the submission of a monitoring and verification report, depending on whether the offset project was commenced before January 1, 2020, or on or after January 1, 2020. The proposed rule also identifies the required contents of the monitoring and verification report, including information identifying the project sponsor, the determination of the CO<sub>2</sub> emissions reduction or sequestration and supporting documentation thereof, and certifications by the project sponsor and an accredited independent verifier

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designed to ensure compliance with all applicable requirements for offset projects at proposed N.J.A.C. 7:27C-10.3 through 10.9.

### *Offset Project-Specific Requirements*

#### *Landfill Methane (CH<sub>4</sub>) Capture and Destruction (Landfill Methane Offset Projects)*

The first category of offset projects eligible for CO<sub>2</sub> offset allowances is projects that reduce emissions of methane from landfills. Methane is a greenhouse gas with a global warming potential of 23 times that of CO<sub>2</sub>. A landfill methane offset project involves the capture of landfill gas from a gas collection system and the combustion of the gas. The combustion of the landfill gas converts methane to CO<sub>2</sub>, a process referred to as “methane destruction.” The resulting conversion of the emitted gas from a gas with a higher global warming potential (formerly methane) to a gas with a significantly lower global warming potential (CO<sub>2</sub>) results in a net reduction in greenhouse gas emissions. “CH<sub>4</sub>” is defined at proposed N.J.A.C. 7:27C-1.2, so that it can be used in place of “methane” in calculations in the proposed subchapter.

A landfill methane offset project must meet the eligibility and qualification requirements for offset projects, generally, at proposed N.J.A.C. 7:27C-10, as well as the requirements at proposed N.J.A.C. 7:27C-10.5 that apply specifically to landfill methane offset projects. A landfill that is already subject to Federal municipal solid waste landfill standards is ineligible for offset allowances, because it is subject to a Federal mandate to flare landfill gas for other environmental control purposes. Therefore, the landfill does not meet the eligibility requirements at proposed N.J.A.C. 7:27C-10.3, discussed above.

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The project sponsor must submit a project narrative identifying the owners and operators of both the offset project and the landfill where the project will occur and providing other information regarding the landfill itself and the equipment to be installed as part of the offset project. The proposed rule sets forth the required calculations to be used to determine both the emissions baseline and emissions reductions attributable to the offset project.

Emissions reductions represent the potential landfill emissions that would have occurred in the absence of the offset project, as determined based on the methane destroyed by the offset project, less a 10-percent oxidation factor to account for the portion of collected methane that would have oxidized in the landfill cover if not collected for destruction. This oxidation factor is a conservative estimate to ensure that the number of CO<sub>2</sub> offset allowances awarded does not exceed the actual CO<sub>2</sub>-equivalent emissions avoided by the offset project.

The proposed rule also establishes requirements for the landfill gas collection system. The offset project must employ a landfill gas collection system that provides methane flow rate and methane concentration data. Annual monitoring and verification reports must include monthly flow data and methane concentration data. The monitoring and verification plan, required as part of the consistency application, must include a quality assurance and quality control program appropriate to the utilized monitoring equipment, and additional provisions regarding the use of measuring and monitoring equipment, retention of maintenance records, and certification of the plan. An accredited independent verifier must certify the monitoring and verification plan. The landfill gas composition must also be verified annually, using applicable EPA laboratory test methods.

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*Sequestration of Carbon by Reforestation, Improved Forest Management, or Avoided Conversion (Forest Offset Projects)*

The second category eligible for CO<sub>2</sub> offset allowances is forest offset projects, which includes projects designed to sequester carbon by reforestation, improved forest management, or avoided conversion. This category is governed by proposed N.J.A.C. 7:27C-10.6.

A forest offset project is a planned set of activities designed to increase removals of CO<sub>2</sub> from the atmosphere or reduce or prevent emissions of CO<sub>2</sub> to the atmosphere, through increasing and/or conserving forest carbon stocks, or preventing the loss of forest carbon stocks by avoiding conversion of forest to another land use. Reforestation, improved forest management, or avoided conversion projects are specifically identified in the proposed rule as eligible for offset allowances. A reforestation project involves restoring tree cover on land that is not at optimal stocking levels and has minimal short-term (30 years) commercial opportunities. An improved forest management project involves management activities that maintain or increase carbon stocks on forested land relative to the baseline levels of carbon stocks. An avoided conversion project involves preventing the conversion of forestland to a non-forested use by dedicating the land to continuous forest cover through either a qualified conversion easement or transfer to public ownership (excluding transfer to Federal ownership). To assist in the regulation of offsets attributable to forestry management, avoided conversion and reforestation, the RGGI participating states developed the Regional Greenhouse Gas Initiative Offset Protocol for U.S. Forest Projects, which describes the parameters for establishing, monitoring, and reporting offset projects as a part of the CO<sub>2</sub> Budget Trading Program. The forest offset protocol is based on the California Air Resources Board (CARB)

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Compliance Offset Protocol, U.S. Forest Projects. (See CARB's website at [www.arb.ca.gov](http://www.arb.ca.gov) for more information on its forest offset protocol.) Since forests can both emit and sequester carbon, the protocol outlines how a baseline is established, the metrics to be used in reporting, guidelines for acceptable projects, and methods for reporting.

A forest offset project must meet the general eligibility and qualification requirements for offset projects at proposed N.J.A.C. 7:27C-10, including the specific requirements at proposed N.J.A.C. 7:27C-10.6. The project sponsor must submit a detailed narrative describing the forest offset project actions to be taken, along with documentation that the project meets the eligibility requirements, information required by the forest offset protocol with respect to project monitoring and reporting, and other information necessary for the Department to fully evaluate the project. Baseline onsite carbon stocks, greenhouse gas reductions, and greenhouse gas removal enhancements, and the project's risk reversal rating are examples of information that must be submitted for forest offset projects, calculated using the forest offset protocol.

The quantification methodology for estimating baseline onsite carbon stocks, as well as the timing of the estimate, differs among the three types of forest offset projects. However, for net greenhouse gas reductions and greenhouse gas removal enhancements, each type of forest project quantification involves the following: estimating baseline onsite carbon stocks; estimating baseline carbon in harvested wood products; determining actual onsite carbon stocks; determining actual carbon in harvested wood products; calculating the offset project's primary (intended) effect; quantifying the offset project's secondary (unintended) effects; and calculating total net greenhouse gas reductions and greenhouse gas removal enhancements.

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Since greenhouse gas reductions and greenhouse gas removal enhancements can be “reversed” if the stored carbon associated with them is released back to the atmosphere, the forest offset protocol requires the use of specific worksheets to identify and quantify the specific types of risks that may lead to a reversal, based on project-specific factors. These risks include: financial (financial failure leading to bankruptcy), management (illegal harvesting, conversion to non-forest uses, and over-harvesting), social (social risks, such as changing governmental policies, regulations, and general economic conditions), and natural disturbance (wildfire, disease/insects, and other episodic catastrophic events).

To demonstrate the achievement of greenhouse gas reductions or removal enhancements, the project sponsor of a forest offset project must comply with the monitoring and reporting requirements in the proposed rule. Specific to forest offset projects, the consistency application must also contain a monitoring and verification plan consisting of a forest carbon inventory program as required by the forest offset protocol. Monitoring and verification reports must be submitted to the Department not less frequently than once every six years, except for the first monitoring and verification report for a reforestation report, which must be submitted within 12 years of project commencement. A forest offset project data report must be submitted for each reporting period, with no gaps in reporting after the start of the first reporting period. In addition, any quantity expressed in metric tons, or metric tons of CO<sub>2</sub>-equivalent, must be converted to tons using the conversion factor specified at proposed N.J.A.C. 7:27C-1 prior to the award of CO<sub>2</sub> offset allowances or any surrender of allowances.

The RGGI forest offset protocol uses a discounting approach (discounting credits at 10 percent, that is, setting a trading ratio less than one) to address reversals and ensure

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permanence of offset projects. For forest offset projects, reversals can be “unintentional,” for example caused by natural agents like fire, insects, or wind, or “intentional,” caused by human activities like land conversion and over-harvesting. These terms are defined at proposed N.J.A.C. 7:27C-10.2 and are addressed more fully at proposed N.J.A.C. 7:27C-10.6. The project sponsor must explain and notify the Department of the reversal, and, within one year of an intentional reversal or within one year of the discovery of an unintentional reversal, submit a verified estimate of current carbon stocks within the offset project boundary. In the case of an unintentional reversal, notice must be provided within 30 days of the discovery of the reversal. In the case of an intentional reversal, the notice must be in writing and provided within 30 days of the reversal.

Consistent with the RGGI Model Rule, the Department proposes a detailed protocol that the project sponsor must follow to determine whether credits need to be compensated for or retired for each type of reversal. If an intentional reversal occurs in a project for which CO<sub>2</sub> offset allowances have been awarded, the forest owner must surrender to the Department for retirement, a quantity of CO<sub>2</sub> allowances equal to the CO<sub>2</sub> equivalent tons reversed. Retirement of an allowance entails taking that allowance out of circulation on the market so that it can no longer be purchased or sold. This surrender of allowances must occur within six months of notification by the Department or subject the forest owner to enforcement action. The Department will notify the forest owner that he or she must surrender allowances after the project sponsor has submitted a verified estimate of carbon stocks. If the project sponsor fails to submit the verified estimate of carbon stocks, Department notification will occur after one year has elapsed since the intentional reversal occurred. If an intentional or unintentional

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reversal lowers a forest offset project's actual standing live carbon stocks below its project baseline standing live carbon stocks, the Department will terminate the forest offset project.

A project sponsor must surrender allowances for retirement within six months of the termination of a forest offset project, in an amount determined in accordance with the forest offset protocol. Failure to do so will subject the project sponsor to enforcement action, with each allowance not surrendered considered a separate violation.

Under voluntary market-based carbon trading programs, no government entity sets standards for offsets sold on these voluntary markets. Therefore, to ensure that emissions reductions are real and "additional," the number of CO<sub>2</sub> offset allowances awarded to a voluntary forest offset carbon project will be calculated in accordance with the proposed rule, without regard to the quantity of credits that were awarded to the project under the voluntary program. Additionally, these projects must satisfy the general requirements of this subchapter and the specific requirements governing voluntary forest offset projects seeking to receive allowances under RGGI, including, but not limited to reporting, consistency application information, cancellation or termination of credits, and termination of relationship with the voluntary greenhouse gas program.

*Avoided Methane Emissions from Agricultural Manure Management Operations  
(Agricultural Methane Offset Projects)*

The third category eligible for CO<sub>2</sub> offset allowances is projects that capture and destroy methane from animal manure and organic food waste. Agricultural manure management offset projects involve the collection of manure in an anaerobic digester and the combustion of the methane collected by the digester. As discussed above, this combustion of collected

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methane causes “methane destruction,” resulting in a net reduction in greenhouse gas emissions. These projects are governed by proposed N.J.A.C. 7:27C-10.7.

To qualify for offset allowances, an agricultural methane offset project must meet the eligibility and qualification requirements for offset projects, generally, at proposed N.J.A.C. 7:27C-10, including those at proposed N.J.A.C. 7:27C-10.7. Only manure-based anaerobic digester systems may be used, and more than half of the annual mass input into the digester must be livestock manure, with any balance comprised of organic food waste that would otherwise have been anaerobically stored.

Given the very low market penetration of anaerobic digester projects in the Northeast and demonstrated market barriers to the implementation of such projects, such as capital investment constraints for small farmers, the Department determined that the ability of agricultural manure management offset projects to capture other incentives in certain instances and still qualify for the award of CO<sub>2</sub> offset allowances is warranted. Accordingly, the proposed rule exempts agricultural manure management offset projects from the provisions of proposed N.J.A.C. 7:27C-10.3(d)2 and 3, provided the offset project is located in a state that has a market penetration for anaerobic digester projects of five percent or less or the project is located on a farm with 4,000 or fewer dairy cows or equivalent animal units, or, if a regional-type digester, the digester is designed to receive manure in an amount less than the average manure production of such a farm. The Department determined that a five percent market penetration rate represents a threshold that, when exceeded, typically leads to rapid market diffusion of a technology or practice, and, therefore, provides a valid indicator that a technology or practice exceeds standard market practice.

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The project sponsor must provide a project narrative to document that the offset project meets the requirements for an anaerobic digester outlined above, identify the owner and operator of both the offset project and the facility where the project will be implemented, and provide other information regarding the facility, the equipment to be installed, and, if the anaerobic digester influent will be received at a different facility, identifying information concerning that facility. As part of the consistency application, the project sponsor must also submit a monitoring and verification plan certified by an accredited independent verifier that includes a quality assurance and quality control program appropriate to the chosen input monitoring parameter, and additional provisions regarding the use of measuring and monitoring equipment, and retention of equipment maintenance records.

The proposed rule provides the calculations and protocols to be employed in determining both the emissions baseline and emissions reductions attributable to the offset project. Emissions reductions for the offset project represent the methane that would have been generated and released through the uncontrolled anaerobic storage of manure and food waste under a baseline scenario, such as a manure lagoon, rather than based on the volume of methane destroyed by the combustion of methane collected by the anaerobic digester. This is to ensure that the CO<sub>2</sub> offset allowances awarded to the offset project do not exceed the actual methane emissions that would have occurred in the absence of the offset project and, therefore, are avoided by the offset project. This addresses the fact that anaerobic digesters are designed to maximize methane generation and the volume of methane generated by an anaerobic digester could potentially exceed the methane generated by the uncontrolled storage of manure and food waste. The proposed rule also requires the systematic metering of

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biogas volumetric flow rate and methane concentration, to be reflected in annual monitoring and verification reports as a monthly value. Additional requirements for monitoring and verification relate to the sampling of volatile solids if the project is a regional-type digester or the project utilizes organic food waste and the quarterly verification of biogas methane composition.

*Definitions of Terms Related to CO<sub>2</sub> Emissions Offset Projects Provisions at N.J.A.C. 7:27C-10*

The Department defines terms at proposed N.J.A.C. 7:27C-10.2 that are used at proposed N.J.A.C. 7:27C-10 and not defined at proposed N.J.A.C. 7:27C-1.2. Definitions taken from the RGGI Model Rule include: “anaerobic digester,” “anaerobic digestion,” “anaerobic storage,” “ANSI,” “biogas,” “conflict of interest,” “CO<sub>2</sub>e,” “cooperating regulatory agency,” “forest offset project,” “forest offset project data report,” “forest offset protocol,” “intentional reversal,” “market penetration rate,” “offset project,” “project commencement,” “regional-type anaerobic digester,” “reporting period,” “reversal,” “system benefit fund,” “total solids,” “transmission and/or distribution entity,” “unintentional reversal,” “verification,” and “volatile solids.” “Allocation period,” and “animal unit,” are used, but not defined in the RGGI Model Rule. The Department proposes definitions for the terms, for clarity. The Department proposes to define “cancelled” or “retired” at N.J.A.C. 7:27C-10.2, based on the RGGI Model Rule’s definition of “permanently retired.” The Department proposes using and defining the term “cancelled” or “retired” instead of “permanently retired” because the latter, while it is clearly intended to clarify the use of “cancelled” or “retired” in this subchapter, is not used in either the RGGI Model Rule or the proposed new subchapter. Rather than refer repeatedly to “an independent verifier accredited pursuant to section XX-10.6” as is done in the RGGI Model

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Rule, the Department proposes to define “accredited independent verifier” at N.J.A.C. 7:27C-10.2 as shorthand for that concept.

Proposed N.J.A.C. 7:27C-10.2 also defines “carbon pool,” which is used only in the definition of “carbon stock.” Proposed “carbon pool” and “carbon stock” are used in connection with the proposed rules regarding the award of CO<sub>2</sub> allowances for forest offset projects. Carbon stock is used, but not defined, in the Model Rule.

CO<sub>2</sub> Authorized Account Representative of a CO<sub>2</sub> Budget Source (N.J.A.C. 7:27C-2) and CO<sub>2</sub> Authorized Account Representative for a General Account (N.J.A.C. 7:27C-6)

Proposed N.J.A.C. 7:27C-2.1, Authorization and responsibilities of the CO<sub>2</sub> authorized account representative for a compliance account, addresses the selection, authorization, and responsibilities of the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source and the relationship between the CO<sub>2</sub> authorized account representative and other parties.

Proposed N.J.A.C. 7:27C-2.2, Alternate CO<sub>2</sub> authorized account representative, addresses the same program elements as they apply to the alternate CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source. Further, the definition of “CO<sub>2</sub> authorized account representative” at proposed N.J.A.C. 7:27C-1.2 provides that use of this term is intended, except where redundant, to include the alternate CO<sub>2</sub> authorized account representative.

Proposed N.J.A.C. 7:27C-2.1 and 2.2 provide that both the CO<sub>2</sub> authorized account representative and his or her alternate are selected by the owners and operators of a CO<sub>2</sub> budget source (and all CO<sub>2</sub> budget units at the source) as reflected in the complete account

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certificate of representation, and both are authorized to represent and legally bind those owners and operators. The procedure for authorizing the alternate CO<sub>2</sub> authorized account representative to act in lieu of the CO<sub>2</sub> authorized account representative will be part of the agreement whereby the alternate CO<sub>2</sub> authorized account representative is selected. The acts of the alternate CO<sub>2</sub> authorized account representative are deemed to be those of the CO<sub>2</sub> authorized account representative, once the Department receives a complete account certificate of representation.

If the CO<sub>2</sub> budget source is subject to the Acid Rain Program or any of the CSAPR programs, the CO<sub>2</sub> authorized account representative must be the same person who is the designated representative for the CO<sub>2</sub> budget source under that program. The same is true for his or her alternate – he or she must be the same person who is the designated alternate representative for the CO<sub>2</sub> budget source under the Acid Rain Program or the CSAPR programs, as applicable. There will be only one CO<sub>2</sub> authorized account representative and only one alternate CO<sub>2</sub> authorized account representative for each CO<sub>2</sub> budget source (including all CO<sub>2</sub> budget units at the source). Representation by the CO<sub>2</sub> authorized account representative and by the alternate CO<sub>2</sub> authorized account representative begins once the Department receives a complete account certificate of representation. The Department will not issue an operating permit that incorporates the CO<sub>2</sub> Budget Trading Program requirements or establish a COATS account for a CO<sub>2</sub> budget source until it receives the complete account certificate of representation.

Only the CO<sub>2</sub> authorized account representative or his or her alternate is authorized to submit, sign, and certify CO<sub>2</sub> Budget Trading Program submissions and must include in each

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submission a statement certifying his or her authorization, familiarity with the content, and belief in the accuracy thereof. The Department will not accept or act on a submission that does not comply with the proposed requirements.

Proposed N.J.A.C. 7:27C-6.4, Authorization of the CO<sub>2</sub> authorized account representative for a general account, addresses the authorization of the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source and the relationship between the CO<sub>2</sub> authorized account representative and other parties. Proposed N.J.A.C. 7:27C-6.4 provides that both the CO<sub>2</sub> authorized account representative and his or her alternate are authorized to represent and legally bind each person who has an ownership interest with respect to CO<sub>2</sub> allowances held in the general account in all matters pertaining to the CO<sub>2</sub> Budget Trading Program. Only the CO<sub>2</sub> authorized account representative for the general account or his or her alternate is authorized to submit, sign, and certify CO<sub>2</sub> Budget Trading Program submissions and must include in each submission, a statement certifying his or her authorization, familiarity with the content, and belief in the accuracy thereof. The Department will not accept or act on a submission that does not comply with the proposed requirements.

Proposed N.J.A.C. 7:27C-2.3, Changing the CO<sub>2</sub> authorized account representative and the alternate CO<sub>2</sub> authorized account representative; changes in the owners and operators, sets forth the procedures and timing for the change of a CO<sub>2</sub> authorized account representative or an alternate CO<sub>2</sub> authorized account representative by the owners and operators of a CO<sub>2</sub> budget source, as well as the steps to be taken when there has been a change in owners or operators. The owners and operators of a CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit can change the CO<sub>2</sub> authorized account representative or his or her alternate by submitting a new

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complete account certificate of representation that reflects the change or changes. The change is effective upon the Department's receipt of the superseding account certificate of representation. Actions of the previous CO<sub>2</sub> authorized account representative or alternate CO<sub>2</sub> authorized account representative taken before the Department receives the superseding account certificate of representation are binding on the new CO<sub>2</sub> authorized account representative, alternate CO<sub>2</sub> authorized account representative, and the owners and operators of the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source. A new owner or operator of a CO<sub>2</sub> budget source or a CO<sub>2</sub> budget unit (one not listed as an owner or operator in the account certificate of representation) will be treated as though he or she was listed in the account certificate of representation, that is, with the same obligations and responsibilities as a listed owner or operator. When there is a change in the owners and operators of a CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit, the CO<sub>2</sub> authorized account representative or his or her alternate must, within 30 days, submit to the Department a revised account certificate of representation that includes an amended list of owners and operators.

Proposed N.J.A.C. 7:27C-6.5, Changing the CO<sub>2</sub> authorized account representative and his or her alternate for a general account; changes in ownership interest, sets forth the procedures and timing for the change in the appointment of these representatives, as well as the steps to be taken when there has been a change in those with an ownership interest in the CO<sub>2</sub> allowances in the general account. The change in the CO<sub>2</sub> authorized account representative or his or her alternate is effectuated by submitting a superseding complete application for a general account that reflects the change or changes and is effective upon receipt by the Department. Actions of the previous CO<sub>2</sub> authorized account representative

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or alternate CO<sub>2</sub> authorized account representative taken before the Department receives the superseding complete application are binding on the new CO<sub>2</sub> authorized account representative, alternate CO<sub>2</sub> authorized account representative, and those with an ownership interest in the CO<sub>2</sub> allowances in the general account. When there is a change as to who has an ownership in the CO<sub>2</sub> allowances in the general account, the list of persons having an ownership interest must be updated within 30 days of such change, to reflect the change in ownership. When someone with an ownership interest in the CO<sub>2</sub> allowances in the general account is not identified in the application for the general account, that person will nevertheless be treated as though he or she were listed; that is, with the same obligations and responsibilities as a listed owner.

Proposed N.J.A.C. 7:27C-2.4, Account certificate of representation, requires the account certificate of representation for a CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source or his or her alternate to be in a format prescribed by the Department and establishes the elements to be included therein. The required elements include information that will allow the Department to identify the CO<sub>2</sub> budget source and CO<sub>2</sub> budget unit, the CO<sub>2</sub> authorized account representative and his or her alternate, and the owners and operators of the CO<sub>2</sub> budget source. Statements certifying the selection and competence of the CO<sub>2</sub> authorized account representative and his or her alternate and their dated signatures must also be included. None of the documents of agreement referred to in the account certificate of representation are to be submitted to the Department, unless otherwise required by the Department; if any are submitted, the Department is not obligated to review or evaluate the sufficiency of such documents.

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As provided at proposed N.J.A.C. 7:27C-2.5, Objections concerning the CO<sub>2</sub> authorized account representative, the Department will rely on a complete account certificate of representation from the time the Department receives it, unless and until the Department receives a superseding complete account certificate of representation. Communications to the Department, other than those relating to the change in the CO<sub>2</sub> authorized account representative, or alternate, pursuant to proposed N.J.A.C. 7:27C-2.3(a), will not affect the authorization or acts of the CO<sub>2</sub> authorized account representative or his or her alternate, or the finality of any decision or order by the Department under the CO<sub>2</sub> Budget Trading Program. The Department will also not adjudicate any private legal dispute concerning the authorization or various acts of a CO<sub>2</sub> authorized account representative or alternate.

Proposed 7:27C-6.6, Objections concerning the CO<sub>2</sub> authorized account representative for a general account, provides that disagreement regarding the selection of this representative is outside the purview of the Department. The Department will rely on a complete application for a general account from the time received, unless and until the Department receives a superseding complete application for a general account. No objection or other communication to the Department, other than those relating to the change in the CO<sub>2</sub> authorized account representative for the general account, or his or her alternate, will affect the authorization or acts of the CO<sub>2</sub> authorized account representative or his or her alternate, or the finality of any decision or order by the Department under the CO<sub>2</sub> Budget Trading Program. Nor will the Department be involved in private legal disputes concerning the authorization or other activities of the CO<sub>2</sub> authorized account representative or his or her alternate. This would also include private legal disputes

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concerning the proceeds of CO<sub>2</sub> allowance transfers.

Proposed N.J.A.C. 7:27C-2.6, Delegation of authority to make electronic submissions and review information in the CO<sub>2</sub> allowance tracking system, allows the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source or his or her alternate to delegate two functions for which he or she is responsible. The first, the authority to make an electronic submission to the Department, can be delegated by submitting a notice of delegation in the format prescribed by the Department. The proposed rule sets forth the required elements of the notice, which include information to help the Department identify the parties to the delegation, including identification and contact information for the CO<sub>2</sub> authorized account representative or his or her alternate; and identification of the delegatee, otherwise referred to as the “electronic submission agent.” The Department proposes at N.J.A.C. 7:27C-1.2 to define the term “electronic submission agent,” which is used but not defined in the RGGI Model Rule.

The notice must also indicate the type of submissions for which authority is delegated and certification by the CO<sub>2</sub> authorized account representative or his or her alternate that delegated electronic submissions made will be deemed to be an electronic submission by the CO<sub>2</sub> authorized account representative or alternate and an agreement to maintain an e-mail account and to notify the Department immediately of any change in the e-mail address.

The notice of delegation is effective when the Department receives it and remains in effect until the Department receives a superseding notice of delegation, which may replace or add an electronic submission agent or eliminate entirely any delegation of authority. The delegated electronic submissions are deemed to be electronic submissions as though made by the delegating CO<sub>2</sub> authorized account representative or his or her alternate.

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The second delegable authority is the authority to review information in COATS. This also can be delegated by submitting a notice of delegation in the format prescribed by the Department and that provides the information and certification required by the rule. This information will help the Department identify the parties to the delegation, including identification and contact information for the CO<sub>2</sub> authorized account representative or his or her alternate; and identification of the delegatee, otherwise referred to as the “reviewer.” The Department proposes at N.J.A.C. 7:27C-1.2 to define the term “reviewer,” which is used but not defined in the RGGI Model Rule.

The notice must also list the type of information for which authority to review is delegated and certification by the CO<sub>2</sub> authorized account representative or his or her alternate that all delegated information reviews will be deemed to be an information review by the CO<sub>2</sub> authorized account representative or alternate and must contain an agreement to maintain an e-mail account and to notify the Department immediately of any change in the e-mail address.

The notice of delegation to review information is effective when the Department receives it and remains in effect until the Department receives a superseding notice of delegation, which may replace or add reviewer or eliminate entirely any delegation of authority.

A CO<sub>2</sub> authorized account representative for a general account can also delegate the authority to make an electronic submission to the Department, pursuant to proposed N.J.A.C. 7:27C-6.7, Delegation of authority to make electronic submissions by the CO<sub>2</sub> authorized account representative for a general account, by submitting a notice of delegation to the Department. This notice must be in a format prescribed by the

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Department and include information to help the Department identify the parties to the delegation, including identification and contact information for the CO<sub>2</sub> authorized account representative or his or her alternate and identification of the delegatee, otherwise referred to as the “electronic submission agent.” The notice must also include the type of submissions for which authority is delegated and certification by the CO<sub>2</sub> authorized account representative or his or her alternate that a delegated electronic submission made will be deemed to be an electronic submission by the CO<sub>2</sub> authorized account representative or alternate and an agreement to maintain an e-mail account and to notify the Department immediately of any change in the e-mail address. The notice of delegation is effective when the Department receives it and remains in effect until the Department receives a superseding notice of delegation. The superseding notice of delegation may replace or add an electronic submission agent or eliminate entirely any delegation of authority. The delegated electronic submissions are deemed to be electronic submissions as though made by the delegating CO<sub>2</sub> authorized account representative or his or her alternate.

#### Procedures for the CO<sub>2</sub> Allowance Tracking System (COATS)

The RGGI CO<sub>2</sub> Allowance Tracking System (COATS) is the platform that records and tracks data for each participating state's CO<sub>2</sub> Budget Trading Program. COATS is administered by RGGI, Inc., and facilitates market participation by enabling the allocation, award, and transfer of CO<sub>2</sub> allowances, the certification and providing of CO<sub>2</sub> allowances for compliance-related tasks; and the registration and submittal of applications and reports for offset projects. Anyone who holds a COATS account can receive, transfer, and hold CO<sub>2</sub> allowances.

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Offset project sponsors can use COATS to register offset projects and submit offset project consistency applications and monitoring and verification reports to the Department. All offset project sponsors must open a COATS general account and obtain an offset project ID code by registering an offset project in COATS in order to complete the offset project application process. More general information on the functioning of COATS is available on the RGGI website at [www.rggi.org](http://www.rggi.org).

In accordance with proposed N.J.A.C. 7:27C-6.1, CO<sub>2</sub> allowance tracking system (COATS) accounts, the Department will establish a compliance account in COATS for each CO<sub>2</sub> budget source that submits a complete account certificate of representation. The Department will establish a general account, which can be used to hold CO<sub>2</sub> allowances, for each person who requests one. The Department will record allocations, deductions, or transfers of CO<sub>2</sub> allowances in the compliance accounts and general accounts, as applicable, in accordance with the proposed new subchapter.

Under proposed N.J.A.C. 7:27C-6.2, when it establishes either a compliance account or a general account, the Department will assign a unique identifying number to the account. Once the COATS account is established, only the CO<sub>2</sub> authorized account representative for the account (or his or her alternate, and, as appropriate, his or her delegate for electronic submissions) will be allowed to make submissions to the Department concerning the account. This includes submissions relating to the deduction or transfer of CO<sub>2</sub> allowances in the account.

Proposed N.J.A.C. 7:27C-6.3 describes the process for opening a general account. Any person may apply to open a general account to hold and transfer CO<sub>2</sub> allowances. The

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application designates a CO<sub>2</sub> authorized account representative and an alternate CO<sub>2</sub> authorized account representative. The procedure for authorizing the alternate CO<sub>2</sub> authorized account representative to act in lieu of the CO<sub>2</sub> authorized account representative must be included in the agreement that controls the selection of the CO<sub>2</sub> authorized account representative. The application must be dated and signed by the CO<sub>2</sub> authorized account representative and the alternate CO<sub>2</sub> authorized account representative and must include contact information for the representatives. Although the application does not need to identify the organization for which the representatives act, it must identify the people subject to the binding agreement appointing the representative or alternate representative, to represent their ownership interest in CO<sub>2</sub> allowances held in the account, and the certification of the representative. If the Department requires, the application must provide any documents of agreement referred to in the application; however, the Department is not obligated to review or evaluate the sufficiency of any such document of agreement.

Proposed N.J.A.C. 7:27C-6.8 addresses the identification, by serial number, and the timing of the recordation of CO<sub>2</sub> allowances, including those allocated to the consumer benefit account, the fixed-price contract set-aside account, and the cogeneration set-aside account, as well as those awarded to a winning bidder in a CO<sub>2</sub> allowance auction or to a project sponsor. The Department will record CO<sub>2</sub> allowances allocated to the consumer benefit account by January 1 of each calendar year. The Department will record CO<sub>2</sub> allowances awarded to a winning auction bidder or project sponsor within five business days of the allocation or award. The Department will assign and record the allowances with a

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unique identification number that includes identification of the year for which the allowances are allocated. For a CO<sub>2</sub> offset allowance, the identification number will also identify the allowance as a CO<sub>2</sub> offset allowance.

Proposed N.J.A.C. 7:27C-6.12, Closing of a general account, establishes the procedures for closing a general account, either by the CO<sub>2</sub> authorized account representative or by the Department, in the case of an inactive, empty general account. To close a general account, the CO<sub>2</sub> authorized account representative must request the Department to delete the account from COATS and otherwise close out the account by following the procedures to record the transfer of all CO<sub>2</sub> allowances in the account to one or more other COATS accounts. The Department can close an inactive general account (one with no activity for at least one year) with no CO<sub>2</sub> allowances in it by giving 20 days' notice to the CO<sub>2</sub> authorized account representative for the general account. The account can be kept open upon a showing of good cause as to why it should not be closed, or a timely transfer of CO<sub>2</sub> allowances into the account.

Proposed N.J.A.C. 7:27C-6.11, Account error, provides for correction by the Department, of errors in COATS accounts followed by notification provided the CO<sub>2</sub> authorized account representative for the account within 10 business days.

The following terms used in provisions addressing COATS procedures are taken from the Model Rule and defined at proposed N.J.A.C. 7:27C-1.2: "CO<sub>2</sub> Allowance Tracking System" or "COATS," "CO<sub>2</sub> Allowance Tracking System account" or "COATS account," "general account," "recordating, record, or recorded," and "serial number."

#### Transfer of CO<sub>2</sub> allowances

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Proposed N.J.A.C. 7:27C-7.1, Submission of CO<sub>2</sub> allowance transfers, establishes the procedures to be followed by a CO<sub>2</sub> authorized account representative to have CO<sub>2</sub> allowance transfers recorded by the Department. The transfer is submitted to the Department, in a format provided by the Department, and includes information that will allow the Department to identify the transferor and transferee accounts, the CO<sub>2</sub> allowances to be transferred, the CO<sub>2</sub> authorized account representative of the transferor account, and provide information concerning the last sale or purchase transaction for the allowances involved in the current transfer, including the sale or purchase price of CO<sub>2</sub> allowances.

Proposed N.J.A.C. 7:27C-7.2, Recording of CO<sub>2</sub> allowance transfer, provides that the Department will only record a CO<sub>2</sub> allowance transfer that complies with the submission requirements of proposed N.J.A.C. 7:27C-7.1 and where the CO<sub>2</sub> allowances that are to be transferred are already in the transferor account. In addition, where a CO<sub>2</sub> allowance transfer is submitted for recordation following the CO<sub>2</sub> allowance transfer deadline, the Department will not record the transfer of any allowances until the Department has deducted CO<sub>2</sub> allowances for the control period for which the transfer deadline has passed. How and when the Department will notify the CO<sub>2</sub> authorized account representative of its decision to record or not record a CO<sub>2</sub> allowance transfer is addressed by proposed N.J.A.C. 7:27C-7.3.

### Appeals

The Department based the appeal procedures for the CO<sub>2</sub> Budget Trading Program at proposed N.J.A.C. 7:27C-1.6 on appeal procedures that the Department has established for other programs, tailored to match the specific elements of the CO<sub>2</sub> Budget Trading Program.

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A party has 20 calendar days to appeal a decision by the Department by sending a request for an administrative hearing to the Department using a form provided by the Department and containing information identifying the requester, the basis for the request for a hearing, the decision being appealed, the facts and related legal issues, and all supporting information and documentation. The Department will deny any request not received by the 20-day deadline and may deny a request that does not contain the required information.

The Department may attempt informal settlement, once it has received a complete request for a hearing. The case can also be mediated by the Department's Office of Dispute Resolution, if the Department finds the case suitable for mediation and the party requesting the adjudicatory hearing has requested mediation.

The Department will request an administrative hearing with the Office of Administrative Law (OAL) for a matter it determines to be a contested case. This does not include a matter that only raises issues of law. Appeals heard by the OAL are conducted in accordance with applicable State law and rules. The Department's denial of a request for hearing is the Department's final decision for the purposes of judicial appeal.

#### Miscellaneous Administrative Provisions

In addition to the proposed provisions directly related to the operation of the CO<sub>2</sub> Budget Trading Program, the Department proposes rules related to calculation of time periods, and severability. Proposed N.J.A.C. 7:27C-1.5 governs the calculation of time periods for the purposes of the proposed new chapter, including the determination of the beginning and end of a time period. The proposed rule also provides for the extension of a time period, so that it

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does not end on a weekend or a day observed as a holiday any state, including New Jersey, or the United States. Severability is addressed by proposed N.J.A.C. 7:27C-1.7, which provides that if a portion of the proposed chapter is ruled invalid or unenforceable, the Department intends that the remainder of the proposed rules will remain in effect.

### General Definitions

In addition to the definitions discussed above, the Department proposes, at N.J.A.C. 7:27C-1.2, definitions of other terms that are used in the proposed new rules. In most cases, these definitions match those in the RGGI Model Rule. The Department proposes other definitions for greater clarity or for terms that are used in the proposed new rules but are not in the RGGI Model Rule, as explained below.

The following proposed definitions are from the RGGI Model Rule: “account number,” “adjustment for banked allowances,” “allocate” or “allocation,” “allocation year,” “attribute,” “attribute credit,” “award,” “CO<sub>2</sub> allowance price,” “CO<sub>2</sub> allowances held” or “hold CO<sub>2</sub> allowances,” “CO<sub>2</sub> Budget Trading Program,” “CO<sub>2</sub> equivalent,” “CO<sub>2</sub> offset allowance,” “combined cycle system,” “combustion turbine,” “commence commercial operation,” “commence operation,” “compliance account,” “consumer benefit account,” “eligible biomass,” “excess emissions,” “fossil fuel,” “fossil fuel-fired,” “global warming potential” or “GWP,” “gross generation,” “life-of-the-unit contractual arrangement,” “maximum potential hourly heat input,” “nameplate capacity,” “New Jersey CO<sub>2</sub> Budget Trading Program adjusted budget,” “New Jersey CO<sub>2</sub> Budget Trading Program base budget,” “non-CO<sub>2</sub> budget unit,” “operator,” “owner,” “participating state,” “receive” or “receipt of,” “source,” “state,” “submit” or “serve,” “ton” or “tonnage,” “unit,” “unit operating day,” and “useful thermal energy.”

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The proposed definitions of “hr,” “lb,” and “MWe” are from the definition of abbreviations in the RGGI Model Rule. In addition, the Department proposes definitions for the following abbreviations used in the proposed new chapter: “CO<sub>2</sub>,” “MMBtu,” “MWh,” “NO<sub>x</sub>,” “O<sub>2</sub>,” and “SO<sub>2</sub>.”

Proposed “distillate of air” is used in the proposed definition of “air contaminant,” which is used in the proposed definition of “source.” These definitions are the same as the definitions in the Air Pollution Control rules at N.J.A.C. 7:27.

The proposed new rules provide for the delegation of authority to make electronic submissions on behalf of the CO<sub>2</sub> authorized account representative. The RGGI Model Rule refers to this person as an “electronic submission agent” within the rule text regarding this delegation of authority. The Department proposes to define this term in the proposed definition section for greater consistency with rulemaking style in this State.

The Department proposes definitions of “Department” and “EPA” to obviate the need to provide the full name of these entities in the proposed rules. The definition of “Department” also clarifies that the use of this term may also refer to the agent designated to represent the State in activities related to the CO<sub>2</sub> allowance auction. The proposed definition of “state” limits the term to political subdivisions of the United States of America for the purposes of this proposed chapter. This definition is the same as the definition in the Air Pollution Control rules at N.J.A.C. 7:27.

Proposed “New Jersey CO<sub>2</sub> Budget Trading Program base budget” is based on the generic term developed in the RGGI Model Rule and made specific to the New Jersey CO<sub>2</sub> Budget Trading Program Base Budget.

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The proposed definition of “person” is consistent with the definition of this term throughout the Air Pollution Control rules at N.J.A.C. 7:27.

#### Civil Administrative Penalties for Violations of N.J.A.C. 7:27C

The Department proposes new civil administrative penalties for violations of the requirements of the CO<sub>2</sub> Budget Trading Program. Existing N.J.A.C. 7:27A-3.5 authorizes the Department to impose a civil administrative penalty for a violation of the Air Pollution Control Act (Act) or any rule promulgated, or administrative order, operating certificate, registration requirement, or permit issued pursuant to the Act, even if the violation is not otherwise included in N.J.A.C. 7:27A. The addition of references to N.J.A.C. 7:27C at N.J.A.C. 7:27A-3.2 and 3.5 makes it clear that the Department may also assess a civil administrative penalty for a violation of N.J.A.C. 7:27C, even if the violation is not included in proposed N.J.A.C. 7:27A-3.10(u).

Existing N.J.A.C. 7:27A-3.5(g) and (h) address the calculation of penalties for certain violations of requirements in N.J.A.C. 7:27-8 and 22, related to continuous monitoring systems. These same systems are used to comply with the requirements of proposed N.J.A.C. 7:27C-8 and 22. Accordingly, the proposed amendments to N.J.A.C. 7:27A-3.5(g) and (h) apply the existing penalty calculation provisions to violations of proposed N.J.A.C. 7:27C-8.1(k), (l), (m) and (n).

The proposed penalties at N.J.A.C. 7:27A-3.10(u) are consistent with existing penalties for similar violations of other Department rules. For example, the Department determined that the requirement to submit a compliance certification report at proposed N.J.A.C. 7:27C-1.4(p) is

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similar to the requirement to submit at N.J.A.C. 7:27-21.3(a); therefore, the penalty provisions for violations of the requirements are consistent.

Under the Grace Period Law, N.J.S.A. 13:1D-125 to -133, a person responsible for a minor violation is afforded a period of time by the Department to correct the violation in order to avoid being subject to a penalty. Based upon the criteria set forth at N.J.S.A. 13:1D-129, the Department has determined which of the proposed penalties at N.J.A.C. 7:27A-3.10(u) are minor, and, thus, subject to a grace period, and which are non-minor, and, thus, not subject to a grace period. Generally, the Department has determined that those violations that do not result in emissions (and, therefore, pose minimal risk to the public health, safety, and the environment) and do not materially and substantially undermine or impair the goals of the regulatory program are classified as “minor.” Under the existing rules, a minor violation can be ineligible for a grace period if the conditions of N.J.A.C. 7:27A-3.10(s) are not met.

### **Social Impact**

The Department anticipates that the proposed amendments and new rules will have a positive social impact in New Jersey by reducing CO<sub>2</sub> emissions that are driving climate change and, as an ancillary benefit, reducing the amount of co-emitted air pollutants that have an adverse impact on air quality and human health. The CO<sub>2</sub> emissions from New Jersey’s CO<sub>2</sub> budget units constitute approximately 16.5 percent of the State’s annual greenhouse gas emissions. Reducing emissions of greenhouse gases and other air pollutants from CO<sub>2</sub> budget units will provide benefits in the form of avoided negative health consequences and future

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damages associated with air pollution and raised global temperatures caused by CO<sub>2</sub> and other greenhouse gas emissions.

Climate change is projected to have a number of adverse social impacts, including harmful effects on human health, natural resources, and the built environment. Northeastern cities, with their abundance of concrete and asphalt and relative lack of vegetation, tend to have higher temperatures than surrounding regions (the “urban heat island” effect). During extreme heat events, nighttime temperatures in the region’s big cities are generally several degrees higher than surrounding regions, leading to increased heat-related deaths among those less able to recover from the heat of the day. Since the hottest days in the Northeast are often associated with high concentrations of ground-level ozone and other pollutants, the combination of heat stress and poor air quality can pose a major health risk to vulnerable groups: young children, the elderly, and those with preexisting health conditions, including asthma. Vulnerability is further increased as key infrastructure, including electricity for potentially life-saving air conditioning, is more likely to fail when it is most needed.

The frequency, intensity, and duration of heat waves is expected to increase in the Northeast. As reflected in the most recent National Climate Assessment, much of the southern portion of the region, including New Jersey, the majority of Maryland and Delaware, and southwestern West Virginia, are projected by mid-century to experience many more days per year above 90 degrees Fahrenheit compared to the end of last century under continued increases in emissions. See Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: Climate Change Impacts in the United States: The Third National Climate Assessment. U.S. Global Change Research Program, 841 pp. doi:10.7930/J0Z31WJ2 (Third National Climate

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Assessment). This will affect the region's vulnerable populations, infrastructure, agriculture, and ecosystems.

Increased health-related impacts and costs, such as premature death and hospitalization due to even modest increases in heat, are predicted in the Northeast's urban centers. One recent study projected that temperature changes alone would lead to a 50 to 91 percent increase in heat-related deaths in Manhattan by the 2080s (Li, T., R. M. Horton, and P. L. Kinney, 2013: Projections of seasonal patterns in temperature-related deaths for Manhattan, New York. *Nature Climate Change*, 3, 717-721, doi:10.1038/nclimate1902). Increased ground-level ozone due to warming is projected to increase emergency room visits for ozone-related asthma in children (0 to 17 years of age) by 7.3 percent by the 2020s (given higher emissions scenario) relative to a 1990 baseline of approximately 650 visits in the New York metropolitan area (Sheffield, P. E., J. L. Carr, P. L. Kinney, and K. Knowlton, 2011: Modeling of regional climate change effects on ground-level ozone and childhood asthma. *American Journal of Preventive Medicine*, 41, 251- 257, doi:10.1016/j.amepre.2011.04.017).

The impacts of climate change on public health will extend beyond the direct effects of temperature on human physiology. Changing distributions of temperature, precipitation, and CO<sub>2</sub> could affect the potency of plant allergens (Ziska, L., K. Knowlton, et al, 2011: Recent warming by latitude associated with increased length of ragweed pollen season in central North America. *Proceedings of the National Academy of Sciences*, 108, 4248-4251, doi:10.1073/pnas.1014107108). Vector-borne diseases are an additional concern. Several states with the highest incidence of Lyme disease in the United States, including New Jersey, are in the Northeast and mid-Atlantic regions (Schwartz AM, Hinckley AF, Mead PS, Hook SA,

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Kugeler KJ. Surveillance for Lyme Disease – United State, 2008-2015. *MMWR Surveill Summ* 2017;66 (No. SS-22):1-12. DOI: <http://dx.doi.org/10.15585/mmwr.ss6622a1>). Although it is not yet clear how climate change will impact Lyme disease (Brownstein, J. S., T. R. Holford, and D. Fish, 2005: Effect of climate change on Lyme disease risk in North America. *EcoHealth*, 2, 38-46, doi:10.1007/s10393-004-0139-x), several studies in the Northeast have linked tick activity and Lyme disease incidence to climate, specifically abundant late spring and early summer moisture. West Nile Virus (WNV) is another vector-borne disease that may be influenced by changes in climate. Suitable habitat for the Asian Tiger Mosquito, which can transmit West Nile and other vector-borne diseases, is expected to increase in the Northeast from the current five percent to 16 percent in the next two decades and from 43 percent to 49 percent by the end of the century, exposing more than 30 million people to the threat of dense infestations by this species (Rochlin, I., D. V. Ninivaggi, M. L. Hutchinson, and A. Farajollahi, 2013: Climate change and range expansion of the Asian tiger mosquito (*Aedes albopictus*) in northeastern USA: Implications for public health practitioners. *PLoS ONE*, 8, e60874, doi:10.1371/journal.pone.0060874).

In addition to these adverse health effects, climate change and subsequent rising sea levels would negatively affect almost 200 miles of the State's coastline. Moreover, climate change is linked to increased storm intensity, extreme drought and heat waves, and increased wind and rainfall events, which would also adversely affect New Jersey's coastline, agricultural industry, and high-density population areas. Future Sea Level Rise and The New Jersey Coast (November 2005) (available at

[http://research3.fit.edu/sealevelriselibrary/documents/doc\\_mgr/443/Cooper%20et%20al.%20](http://research3.fit.edu/sealevelriselibrary/documents/doc_mgr/443/Cooper%20et%20al.%20)

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[2005.%20Assessing%20SLR%20Impacts%20&%20Opportunities.pdf](#)). New Jersey is especially susceptible to these changes due to geological subsidence, the topography of its coastline, current coastal erosion, and a high density of coastal development.

Climate change is a global challenge that, as noted by Governor Murphy's Executive Order No. 7 (2018), disproportionately impacts economically disadvantaged communities. The Department believes that New Jersey's adoption of these rules to participate in RGGI, and the requirements of the CO<sub>2</sub> Budget Trading Program overall, are measures that will help to mitigate the adverse social impacts of climate change for all of New Jersey's communities. By participating in RGGI, the Department expects to not only reduce the adverse social impacts of increased emissions of CO<sub>2</sub>, but also reduce the negative effects of other air pollutants, such as sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), and directly emitted fine particulate matter (PM<sub>2.5</sub>). The effects of these air pollutants on public health have been widely and extensively studied by the EPA and others. The outcomes from reducing these air pollutants that have been quantified and monetized in these studies include: reduced incidence of premature mortality from exposure to PM<sub>2.5</sub>, reduced incidence of morbidity from exposure to PM<sub>2.5</sub>, reduced incidence of premature mortality from exposure to ozone, and reduced incidence of morbidity from exposure to ozone. Integrated Science Assessment (ISA) for Sulfur Oxides – Health Criteria (Final Report, Sep 2008), U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-08/047F; U.S. EPA. Integrated Science Assessment for Oxides of Nitrogen – Health Criteria (Final Report, July 2008), U.S. Environmental Protection Agency, National Center for Environmental Assessment Washington, DC, EPA/600/R-08/071; and U.S. EPA. Integrated Science Assessment (ISA) for Particulate Matter (Final Report, Dec 2009), U.S. Environmental

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Protection Agency, Washington, DC, EPA/600/R-08/139F. Other health impacts that have been recognized, but not quantified or monetized, include reduced incidence of morbidity from exposure to NO<sub>x</sub> and SO<sub>2</sub>. See also National Research Council. 2002. Estimating the Public Health Benefits of Proposed Air Pollution Regulations. Washington, DC: The National Academies Press. <https://doi.org/10.17226/10511>; Driscoll, C.T, Buonocore, J., Reid, S., Fakhraei, H, and Lambert, K.F. 2014. Co-benefits of Carbon Standards Part 1: Air Pollution Changes under Different 111d Options for Existing Power Plants. Syracuse University, Syracuse, NY and Harvard University, Cambridge, MA. A report of the Science Policy Exchange. 34 pp. The Department anticipates that the reduction in these emissions will help improve air quality by lowering the concentration of PM<sub>2.5</sub> and ozone in air, especially in the vicinity of and downwind from CO<sub>2</sub> budget units.

### **Economic Impact**

New Jersey proposes to rejoin RGGI at a time when the program has operated for nine years, providing observable CO<sub>2</sub> allowance auction results and measurable reductions in energy use from energy efficiency programs funded by auction proceeds. Because fossil fuel-fired units emit carbon dioxide, the cost of complying with the proposed rules, which impose a carbon constraint on CO<sub>2</sub> budget units in New Jersey, will likely increase the cost of wholesale power in the near term. Nevertheless, the Department anticipates that any increase in the cost of electricity resulting from the proposed compliance requirements will be offset by the economic benefit of investing revenue from the sale and auctioning of CO<sub>2</sub> allowances because these funds will support in-State incentives to increase end-use energy-efficiency technologies, renewable energy technologies, and ratepayer relief measures. Further, the Department

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expects that any increased electricity costs will be offset by avoided healthcare costs due to the ancillary benefit of reducing emissions of SO<sub>2</sub>, NO<sub>x</sub>, particulate matter, as well as emissions of hazardous air pollutants such as arsenic and chromium. In short, the Department anticipates that rejoining RGGI will have a net positive impact on New Jersey's economy.

Under the proposed rules, the Department expects that CO<sub>2</sub> budget sources will incur additional costs related to compliance with the CO<sub>2</sub> Budget Trading Program and that the CO<sub>2</sub> budget sources will recover a substantial portion of program compliance costs by passing the cost of allowances on to ratepayers. In April 2018, Analysis Group published an independent report on the economic impacts of the RGGI program in participating states, during the third, three-year-period of the program (2015-2017). See *The Economic Impacts of the Regional Greenhouse Gas Initiative on Nine Northeast and Mid-Atlantic States Review of RGGI's Third Three-Year Compliance Period (2015-2017)*, April 2018. The Analysis Group found that during the compliance period (otherwise known as a control period), owners of emitting sources recovered their expenditures on CO<sub>2</sub> allowances; however, the net effect of the program resulted in reduced revenues for these facility owners. Specifically, the investment of RGGI auction allowance proceeds in energy efficiency lowered demand, resulting in lower revenues for carbon-emitting sources. The report by Analysis Group concludes that fossil fuel-fired power plant owners generally lost revenue (\$940 million), while owners of nuclear plants and renewable resources gained revenue (\$590 million) as the price on carbon emissions in regional dispatch decisions tends to shift output to lower-carbon-emitting and renewable power sources. This shift benefits owners of zero-carbon-generating sources, such as nuclear, wind,

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solar, and hydro, who are paid higher wholesale market prices that reflect CO<sub>2</sub> allowance costs, without having to buy allowances.

CO<sub>2</sub> budget sources may bear an additional cost for monitoring, recordkeeping, and reporting requirements. All CO<sub>2</sub> budget sources will be required to incorporate these requirements into their operating permit to assure compliance with the program. Further, the owners and operators of each CO<sub>2</sub> budget source must install and certify monitoring systems and collect, record, quality-assure, and report data necessary to quantify CO<sub>2</sub> mass emissions from that source. The Department estimates that 37 facilities will be affected by the new and amended rules. Further, the Department anticipates that a facility can expect to spend less than \$50,000 to set up monitoring and data acquisition systems if the facility has no existing system. This estimate is based on the EPA's monitoring, reporting, and recordkeeping cost estimates. However, for the majority of the CO<sub>2</sub> budget sources in New Jersey, the Department believes only minor modifications will be necessary for existing systems. For instance, some of the facilities will already have the equipment required to monitor emissions of SO<sub>2</sub> and NO<sub>x</sub>. The data collected to support the monitoring of such emissions can also be utilized to monitor CO<sub>2</sub> mass emissions. Additionally, some facilities previously installed CO<sub>2</sub> monitoring systems when New Jersey previously participated in RGGI. Thus, the cost of compliance may be limited to upgrading an existing system and/or additional recordkeeping and reporting duties.

As noted above, the costs from the required purchase of CO<sub>2</sub> allowances for each ton of CO<sub>2</sub> emitted are passed through from the electric generators to ratepayers. The Department recognizes that, at least initially, electricity ratepayers will bear a sizable portion of the compliance costs of the program through an increase in wholesale electricity prices. Based on

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the Department's CO<sub>2</sub> budget for the 2020 allocation year, the Department projects selling 4.5 million allowances at each quarter-annual auction (18 million annually). Assuming an average clearing price of \$4.67 (computed by averaging the quarterly auction clearing price from the third compliance period March 2015 through December 2017) as reported by RGGI, Inc., fossil fuel-fired electric generators would be required to spend about \$21.0 million for CO<sub>2</sub> allowances per auction. Using the 2017 retail sales of electricity data for New Jersey provided by the United States Energy Information Administration (EIA) (and available on its website at [www.eia.gov](http://www.eia.gov)), the Department projects that passing this cost to ratepayers would represent an increase of \$0.0012 per kW/hour. Based on the average annual residential electricity usage of 7,850 kWh per year for 2017, this would translate into an average cost of about \$9.00 per household per year or an annual monthly electric bill increase of less than \$1.00 per month.

Notably, RGGI is on track to reduce the regional CO<sub>2</sub> budget allowance cap by 2.5 percent each year from 2018 through 2020; the planned reduction in the regional CO<sub>2</sub> budget allowance cap will result in a total 30 percent reduction in the regional cap from 2020 to 2030. This planned future tightening of RGGI's regional CO<sub>2</sub> budget allowance cap is expected to increase allowance prices, which could lead to increased costs passed through to electricity consumers.

According to Analysis Group's report, the inclusion of the cost of CO<sub>2</sub> allowances in wholesale prices increased retail electricity prices in the RGGI region at the beginning of the 2015 through 2017 compliance period, but the investment of RGGI auction proceeds in energy efficiency programs that reduce overall electricity consumption and in renewable energy

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projects that reduce the use of higher-priced power plants has more than offset these increases towards the end of the compliance period. Using EIA's average monthly residential bill data, the average residential price in cents/kWh of RGGI participating states increased five percent over the eight-year period from 2008 to 2016, compared to an increase of 17 percent in the non-participating contiguous states during the same period. In the single-year period from 2015 to 2016, the average residential price in cents/kWh of RGGI states decreased 1.7 percent, versus an increase of 0.5 percent in the contiguous states. The Department expects that, similar to the experiences of the RGGI participating states that were evaluated as part of the Analysis Group's report, the State will invest its CO<sub>2</sub> auction proceeds in energy efficiency programs, renewable energy projects, and ratepayer relief measures in accordance with N.J.S.A. 26:2C-51.b(2). Thus, the Department anticipates that the investment of auction proceeds will work to offset the compliance costs, which will be passed on to the ratepayers.

As discussed in the Social Impact statement, the costs of participating in RGGI are also expected to be offset by the savings from reduced healthcare costs associated with climate change. The outcomes that have been quantified and monetized in the studies referenced in the Social Impact statement include: reduced incidence of premature mortality from exposure to PM<sub>2.5</sub>, reduced incidence of morbidity from exposure to PM<sub>2.5</sub>, reduced incidence of premature mortality from exposure to ozone, and reduced incidence of morbidity from exposure to ozone. Other health impacts have been recognized, but have not been quantified or monetized, such as reduced incidence of morbidity from exposure to NO<sub>x</sub>, SO<sub>2</sub>, and methylmercury. Environmental improvements are also anticipated, but not quantified or monetized. These include reduced visibility impairment, reduced effects from corrosion and

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particulate deposition on infrastructure related materials (such as buildings, roads, bridges, cars, and other built environments), and impacts to ecosystems from exposure to ozone and from acid deposition.

The Model Rule provides for a decrease in the regional allowance allocation cap of 2.5 percent per year in 2019 and 2020, and a decrease of about three percent annually from 2021 through 2030. As noted above, New Jersey's current annual emissions of CO<sub>2</sub> are about 18.6 million tons. A three percent reduction in emissions would mean an annual reduction of approximately 550,000 tons of CO<sub>2</sub>. Based on data from the EPA Air Markets Program Database and the EPA Air Emissions Inventory, the ton per ton ratios of SO<sub>2</sub>, NO<sub>x</sub>, and PM<sub>2.5</sub> per ton of CO<sub>2</sub> emissions are: 0.0000926, 0.000185, and 0.00165, respectively. Applying these ratios to the tons of CO<sub>2</sub> reduced under the three percent emissions reduction scenario (that is, 550,000 tons) yields an estimated annual reduction of 51 tons of SO<sub>2</sub>, 102 tons of NO<sub>x</sub> and 907 tons of PM<sub>2.5</sub>. The EPA provides estimates of the benefits-per-ton of reduced emissions based on the outcomes that were quantifiable and monetized for its analysis in 2015. (See USEPA. 2015. Regulatory Impact Analysis for the Clean Power Plan Final Rule. October 23, 2015 (EPA RIA).) Using the mid-point of the range (the EPA used a range of outcome effects and discount rates for valuing future impacts) for the "East Region," as defined in the EPA RIA (2015), in the year 2020 provides the following benefits-per-ton estimates in 2017-dollar units: \$57,000/ton for SO<sub>2</sub>, \$17,000/ton for NO<sub>x</sub>, and \$186,000/ton for directly emitted PM<sub>2.5</sub>. Therefore, estimated total annual health benefits, for monetized outcomes only, are \$168 million from reductions of PM<sub>2.5</sub>, \$1.73 million from reductions of NO<sub>x</sub>, and \$2.91 million from reductions of SO<sub>2</sub>.

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Additional benefits may derive from avoided global damages (that is, costs) due to the impact of CO<sub>2</sub> emissions on climate-forcing mechanisms. Because these mechanisms are still not fully understood, the Federal interagency working group (IWG) used three integrated assessment models to develop four distinct estimates for the social cost of CO<sub>2</sub> (EPA RIA). These estimates, commonly referred to as the social cost of carbon, are \$12.00, \$40.00, \$60.00, and \$120.00 per ton, representing the following discount rates, respectively, five percent, three percent, 2.5 percent, and the 95th percentile at three percent discount rate. As described above, the reduction of the cap may result in a reduction of approximately 550,000 tons of CO<sub>2</sub> annually. If the Department uses the value of \$40.00 per ton of CO<sub>2</sub> emissions, as used by the EPA in previous rules, the annual benefit from the avoided social cost of carbon is expected to be approximately \$22 million, in addition to the regional health-based benefits.

Finally, the Department anticipates that the new and amended rules will impact State agencies, given the staff hours that will be needed to administer compliance with RGGI. The State will need to review qualification applications of prospective CO<sub>2</sub> allowance auction participants, which includes financial security information. Other State agency administrative costs will include costs incurred by RGGI, Inc., which are pro-rated among the participating states, potential RGGI new-member expenses and fees, oversight and enforcement costs, and evaluation and audit costs.

### **Environmental Impact**

The Department anticipates that the proposed amendments and new rules will have a positive environmental impact. By adopting rules that require CO<sub>2</sub> budget units in New Jersey

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to comply with the requirements of the CO<sub>2</sub> Budget Trading Program and otherwise facilitate the State's participation in RGGI, New Jersey will take a significant step to mitigate the adverse environmental impacts of climate change by reducing CO<sub>2</sub> emissions from the electricity generation sector operating in the State.

As reflected in the Third National Climate Assessment, cited in the Social Impact statement above, global climate is changing rapidly compared to the pace of natural variations in climate that have occurred throughout Earth's history. The global average temperature has increased by about 1.7 degrees Fahrenheit from 1901 to 2016 and observational evidence consistently points to human activities, especially the emission of greenhouse or heat-trapping gases, as the dominant cause.

The Department's most recently updated (August 2017) Environmental Trends report for climate change (<http://www.nj.gov/dep/dsr/trends/pdfs/climate-change.pdf>) cites regional assessments predicting that the Northeastern region of the United States, including New Jersey, will experience changes consistent with those anticipated on larger spatial scales. The Third National Climate Assessment presents observed and projected climate changes for the Northeast region, reporting that temperatures in the region increased by almost two degrees Fahrenheit (0.16 degrees Fahrenheit per decade) while precipitation increased by over 10 percent or 127 millimeters (five inches) (roughly 10.2 millimeters (0.4 inches) per decade) between 1958 and 2011. (Third National Climate Assessment.) Sea level rose approximately 305 millimeters (12 inches) since 1900, exceeding the global average of about 203 millimeters (eight inches). (Third National Climate Assessment). More than any other region in the United States, the Northeast has seen a greater recent increase in extreme precipitation.

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Due to the global magnitude of climate change, reducing global greenhouse gas emissions to levels that will mitigate the potential for dangerous human interference with the climate system will require the collective action of multiple nations, regions, and localities. A report on RGGI prepared by the Acadia Center indicates that, between 2008 and 2016, CO<sub>2</sub> emissions in the participating RGGI states decreased by 33 percent (Strutt, Shattuck, and Kumar, (2017) *Outpacing the Nation: RGGI's Environmental and Economic Success*, available on Acadia Center's website at [www.acadiacenter.org](http://www.acadiacenter.org)). Moreover, the 2017 Model Rule, with which the proposed amendments and new rules conform, includes a commitment to reduce the total CO<sub>2</sub> emissions budget for all of the RGGI states by 30 percent between 2020 and 2030.

While on a global scale these emissions reductions may appear relatively modest, New Jersey's adoption of these rules to require CO<sub>2</sub> budget units operating in New Jersey to comply with the regional CO<sub>2</sub> Budget Trading Program and the State to generally participate in RGGI is one piece of a larger effort to meet the State's Global Warming Response Act's (GWRA) key greenhouse gas reduction goal of 80 percent below 2006 levels by 2050. This goal represents the emission reduction level scientists advise is needed to avoid the most catastrophic potential effects from climate change. While the Department recognizes that New Jersey's achievement of this goal on its own will not preclude local adverse climate impacts, it reflects a commitment and understanding that New Jersey must be part of the necessary global response if the most catastrophic impacts are to be avoided. These effects include rising temperatures, changes in precipitation, more frequent extreme weather events, and rising sea levels.

As noted in the Social Impact statement, adoption of these rules to require CO<sub>2</sub> budget units operating in New Jersey to comply with the requirements of the CO<sub>2</sub> Budget Trading

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Program and to otherwise require the State to participate in RGGI will also reduce the negative economic effects of other criteria air pollutants, such as SO<sub>2</sub>, NO<sub>x</sub>, and PM<sub>2.5</sub>, as well as hazardous air pollutants that result from the burning of fossil fuels.

### **Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) and Executive Order No. 27 (1994) require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Department is proposing amendments and new rules for which there are no comparable rules or Federal standards. Accordingly, no Federal standards analysis is required.

### **Jobs Impact**

Macroeconomic analysis conducted on the nine RGGI participating states during the three compliance periods between 2009 and 2018 (Economic Analysis of RGGI, pp. 9-10) found that tens of thousands of temporary and permanent jobs were created in the states due to consumer gains, lower producer revenues, and net positive macroeconomic impacts. The Department anticipates similar positive job impacts will result from the proposed amendments and new rules and New Jersey's renewed participation in RGGI.

The Economic Analysis of RGGI aggregated the economic impact of participation in RGGI and the economic impact of the proceeds from the CO<sub>2</sub> allowance auctions. Since businesses consider utility costs when making decisions on where to site operations, the anticipated increase in electricity rates due to the CO<sub>2</sub> Budget Trading

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Program could have a small net negative impact on jobs in the State. However, the positive jobs impact due to the State's investment in energy efficiency, renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies with the CO<sub>2</sub> allowance auction proceeds would likely outweigh any negative impact.

### **Agriculture Industry Impact**

The Department anticipates that the proposed amendments and new rules will have a positive impact on the agricultural industry in New Jersey by reducing emissions of CO<sub>2</sub> and, therefore, reducing atmospheric concentrations of greenhouse gases that are driving climate change. In 2014, the New Jersey Climate Alliance published a Working Brief entitled, A Summary of Climate Change Impacts and Preparedness Opportunities for the Agricultural Sector in New Jersey. The Working Brief predicted that climate change would have significant impacts on the agricultural industry in New Jersey as a result of warming temperatures, extreme weather events, sea level rise, and higher concentrations of CO<sub>2</sub>. By adopting these rules and joining RGGI, New Jersey will cap the amount of CO<sub>2</sub> emissions produced by the electricity generating sector, thereby mitigating the adverse impacts of climate change on the State's agriculture industry.

The New Jersey Climate Adaptation Alliance, a group facilitated by Rutgers University, prepared a series of working briefs to provide background information on projected climate impacts for six major sectors in New Jersey, including agriculture. In 2012, 10,300 farms generated cash receipts totaling \$1.12 billion. Agricultural production included nursery and

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greenhouse plants; sod; fruits and vegetables; equine; poultry and eggs; specialty crops, such as wine grapes, and fish and seafood. (A Summary of Climate Change Impacts and Preparedness Opportunities for the Agricultural Sector in New Jersey, March 2014, available from Rutgers University's website at <http://njadapt.rutgers.edu>).

Climate change is projected to lead to more intense rainfall events and a higher incidence of short-term drought. Heavy rainstorms in the spring, in addition to causing direct crop damage, can delay planting, which may jeopardize farmers' profits, and may lead to flooding of fields, which can lead to crop losses and an increased susceptibility to root diseases. Short-term drought will likely increase the need for irrigation because higher temperatures increase transpiration. For high-value agricultural sectors, such as tomatoes, changes in the rate of rainfall and transpiration due to climate change could have a significant adverse impact. Extreme events also impact fisheries. Higher spring nitrogen-containing runoff into New Jersey coastal wetlands and estuaries stimulates harmful algal blooms and excess production of microscopic plants that deplete oxygen supplies as they decompose.

Warmer temperature impacts on crops include decreasing yield, obsolescence of certain varieties, and increased needs for both land conservation and water management strategies. For livestock, decreases in production and yield are also expected. The spread of invasive weeds resulting from warmer temperatures has already caused major crop losses in the Southern United States and elsewhere, requiring the increased use of pesticides and herbicides. As temperatures continue to rise, New Jersey could experience a similar problem with invasive species, not only because of the increased use of pesticides and herbicides, but because higher

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atmospheric concentrations of CO<sub>2</sub> have been shown to reduce the effectiveness of widely used herbicides.

By mid-century, New Jersey's climate is likely to become much less favorable to blueberry and cranberry growing in particular, as the long winter-chill periods necessary for these crops to produce fruit shorten due to climate change. This will largely impact small growers, who produce much of those two crops. See Frumhoff, P.C., J.J. McCarthy, J.M. Melillo, S.C. Moser, and D.J. Wuebbles. 2007. *Confronting Climate Change in the U.S. Northeast: Science, Impacts, and Solutions*. Synthesis report of the Northeast Climate Impacts Assessment (NECIA). Cambridge, MA: Union of Concerned Scientists (UCS)). Available on the website of the Union of Concerned Scientists at [www.ucsusa.org](http://www.ucsusa.org).

Higher temperatures will also increase the formation of ground level ozone in the absence of more aggressive measures to reduce pollutant emissions that lead to ozone formation. Ozone leads to damage of the foliage of plants and trees and interferes with a plant's ability to produce and store nutrients, which makes plants more susceptible to disease, insects, other pollutants, and harsh weather. This injures native vegetation and ecosystems and reduces annual crop production in New Jersey and throughout the United States. The proposed amendments and new rules should have a positive impact on agriculture in this State by reducing the extent of the significant losses attributable to ozone damage.

### **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

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that the proposed amendments and new rules would impose upon small businesses. The Regulatory Flexibility Act defines the term "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, the Department does not believe any of the large stationary combustion units impacted by these proposed amendments and new rules are owned or operated by a small business; each is owned or operated by a business that employs 100 or more people full-time. Accordingly, no further analysis is required.

#### **Housing Affordability Impact Analysis**

In accordance with N.J.S.A. 52:14B-4, the Department has evaluated the proposed amendments and new rules to determine their impact, if any, on the affordability of housing. The proposed amendments and new rules establish the CO<sub>2</sub> Budget Trading Program for large fossil fuel-fired electric generating units in New Jersey. Given that the proposed rules and amendments pertain to electric generating units and neither impose requirements, nor confer direct benefits onto homeowners, builders, or other providers of housing, the Department has determined that the proposed rules will not impact housing affordability, or the average costs of housing, in the State.

#### **Smart Growth Development Impact Analysis**

In accordance with N.J.S.A. 52:14B-4, the Department has evaluated the proposed amendments and new rules to determine their impact, if any, on housing production in

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Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments and new rules establish the CO<sub>2</sub> Budget Trading Program for electric generating units located in New Jersey and do not impact land use development of any kind including that of residential housing. Therefore, the rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

In accordance with N.J.S.A. 52:14B-4(a)(2) and N.J.S.A. 2C:48B-2, the Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

## CHAPTER 27

### AIR POLLUTION CONTROL

#### SUBCHAPTER 22. OPERATING PERMITS

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#### 7:27-22.1 Definitions

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

...

**“CO<sub>2</sub> budget source” means a facility that includes one or more CO<sub>2</sub> budget units.**

**“CO<sub>2</sub> budget unit” means a fossil fuel-fired unit that, at any time on or after January 1, 2005, served or serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe, as defined and regulated pursuant to N.J.A.C. 7:27C.**

...

#### 7:27-22.16 Operating permit contents

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

(m) [(Reserved)] **The operating permit shall contain all applicable requirements of the CO<sub>2</sub> Budget Trading Program at N.J.A.C. 7:27-22.28 and 7:27C. The operating permit shall contain sufficient monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with applicable requirements of the CO<sub>2</sub> Budget Trading Program at N.J.A.C. 7:27-22.28 and 7:27C.**

(n) Each operating permit shall include a compliance plan [which] **that** includes all of the elements required for a proposed compliance plan pursuant to N.J.A.C. 7:27-22.9 **and 7:27C.**

(o) Each operating permit shall contain the following provisions with respect to monitoring, recordkeeping, and reporting:

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1. Provisions to implement the testing and monitoring requirements of N.J.A.C. 7:27-22.18, the recordkeeping and reporting requirements of N.J.A.C. 7:27-22.19, **the monitoring, recordkeeping, and reporting requirements of N.J.A.C. 7:27C-8**, and all emissions monitoring and analysis procedures or compliance assurance methods required under the applicable requirements, including any procedures and methods promulgated pursuant to 40 CFR 64; and

2. (No change.)

(p)- (t) (No change.)

7:27-22.28 [(Reserved)] **Incorporation of CO<sub>2</sub> Budget Trading Program requirements**

**(a) The owner or operator of a facility subject to N.J.A.C. 7:27C shall apply to incorporate the requirements of the CO<sub>2</sub> Budget Trading Program at N.J.A.C. 7:27C, as applicable, into the operating permit pursuant to N.J.A.C. 7:27-22.3(u), 22.5, and 22.9, by the following deadlines:**

**1. For a CO<sub>2</sub> budget source for which the Department had issued an operating permit prior to (the operative date of this section), on or before January 1, 2020;**

**2. For a CO<sub>2</sub> budget source for which, prior to (the operative date of this section), the Department had issued a preconstruction permit but had not issued an operating permit, no later than 12 months after the facility commences operation; and**

**3. For a CO<sub>2</sub> budget source for which the Department had not issued an operating permit or a preconstruction permit prior to (the operative date of this section), and for which the owner or operator elects to obtain both preconstruction and operating permit approval, no later than 12 months before construction commences.**

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**(b) If the Department approves the incorporation of CO<sub>2</sub> Budget Trading Program requirements into an operating permit, the Department will establish permit conditions in the operating permit that will enable the Department to readily verify whether emissions from the source operations meet the requirements of N.J.A.C. 7:27C. Such permit conditions will set forth replicable procedures, including monitoring, source emissions testing, recordkeeping, and reporting procedures, sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions limitation under N.J.A.C. 7:27C is enforceable.**

## CHAPTER 27A

### AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

#### SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

##### 7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms are as defined in N.J.S.A. 26:2C-2 and N.J.A.C. 7:27 **and 27C**.

...

##### 7:27A-3.5 Civil administrative penalty determination—general

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

(d) The Department may assess a civil administrative penalty for a violation of any provision of

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N.J.A.C. 7:27 **or 27C** for which no penalty amount is specified under N.J.A.C. 7:27A-3.6 through

3.11. The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:27A-3.6 through 3.11 for a violation [which] **that** is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping requirements, reporting requirements, or emission limits) and the nature and extent of the environmental harm likely to result from the type of violation; and

2. (No change.)

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

(g) For violations of N.J.A.C. 7:27-8.3(e) [and N.J.A.C. 7:27-22.3(c)] **or 22.3(c)** or (e) **or 7:27C-8.1(k), (l), or (n)**, indicated by a continuous monitoring system, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(n)<sup>1</sup> and may, in its discretion for purposes of determining the statutory maximum penalty for an offense, treat an offense as a first offense for civil administrative penalty determination purposes, at the beginning of each calendar quarter.

(h) For violations of N.J.A.C. 7:27-8.3(e) [and N.J.A.C. 7:27-22.3(d)] **or 22.3(d)** or (e) **or 7:27C-8.1(k), (m), or (n)**, when a continuous monitoring system operates out of control or is out of service, the Department shall calculate penalties in accordance with N.J.A.C. 7:27A-3.10(n)<sup>2</sup> and may, in its discretion, treat an offense as a first offense for civil administrative penalty determination purposes, if the violator has not committed the same offense in the four

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consecutive calendar quarters immediately preceding the first day of the calendar quarter during which the pending offense was committed.

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

(a) - (t) (No change.)

**(u) The violations of N.J.A.C. 7:27C, whether the violation is minor or non-minor in accordance with (q) through (t) above, 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. 7:27C. The rule summaries provided in the column labelled “Class” for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.**

**CIVIL ADMINISTRATIVE PENALTY SCHEDULE**

**1. The violations of N.J.A.C. 7:27C-1, General Provisions, and the civil administrative penalty amounts for each violation are as set forth in the following table:**

<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>

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	<b>Submit an</b>					
<b>N.J.A.C.</b>	<b>exemption</b>					
<b>7:27C-1.3(e)</b>	<b>report</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
	<b>Retain</b>					
<b>N.J.A.C.</b>	<b>exemption</b>					
<b>7:27C-1.3(f)</b>	<b>records</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
	<b>Submit and</b>					
	<b>obtain a</b>					
<b>N.J.A.C.</b>	<b>Title V</b>					
<b>7:27C-1.4(a)</b>	<b>permit</b>	<b>NM</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$50,000</b>	<b>\$50,000</b>
	<b>Obtain a CO<sub>2</sub></b>					
<b>N.J.A.C.</b>	<b>budget</b>					
<b>7:27C-1.4(b)</b>	<b>permit</b>	<b>NM</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$50,000</b>	<b>\$50,000</b>
<b>N.J.A.C.</b>	<b>Monitoring</b>					
<b>7:27C-1.4(c)</b>	<b>compliance</b>	<b>NM</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$50,000</b>	<b>\$50,000</b>

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<b>N.J.A.C.</b>	<b>Hold CO<sub>2</sub></b>					
<b>7:27C-1.4(f)</b>	<b>allowances</b>	<b>NM</b>	<b>\$10,000<sup>1</sup></b>	<b>\$20,000<sup>1</sup></b>	<b>\$50,000<sup>1</sup></b>	<b>\$50,000<sup>1</sup></b>
	<b>Allowances</b>					
	<b>transferred</b>					
	<b>through</b>					
	<b>tracking</b>					
<b>N.J.A.C.</b>	<b>system</b>					
<b>7:27C-1.4(i)</b>	<b>accounts</b>	<b>NM</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
	<b>Keep</b>					
<b>N.J.A.C.</b>	<b>documents</b>					
<b>7:27C-1.4(o)</b>	<b>on site</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
	<b>Submit a</b>					
	<b>compliance</b>					
<b>N.J.A.C.</b>	<b>certification</b>					
<b>7:27C-1.4(p)</b>	<b>report</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>

<sup>1</sup> For each ton of CO<sub>2</sub> emitted in excess of the CO<sub>2</sub> budget emissions limitation

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**2. The violations of N.J.A.C. 7:27C-2, CO<sub>2</sub> Authorized Account Representative of a CO<sub>2</sub> Budget Source, and the civil administrative penalty amounts for each violation are as set forth in the following table:**

<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
N.J.A.C. 7:27C-2.1(b)	Select a CO <sub>2</sub> authorized account representative	NM	\$10,000	\$20,000	\$50,000	\$50,000
N.J.A.C. 7:27C-2.1(c)	Same account representative	M	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27C-2.1(f)	Submit a certified report	M	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27C-2.3(c)	Submit a revision of the account certificate of representation	M	\$2,000	\$4,000	\$10,000	\$30,000

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**3. (Reserved)**

**4. The violations of N.J.A.C. 7:27C-4, Compliance Certification, and the civil administrative penalty amounts for each violation are as set forth in the following table:**

<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
N.J.A.C. 7:27C-						
4.1(a)	Submit a certified report M		\$2,000	\$4,000	\$10,000	\$30,000

**5. The violations of N.J.A.C. 7:27C-5, CO<sub>2</sub> Allowance Allocations, and the civil administrative penalty amounts for each violation are as set forth in the following table:**

<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>

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<b>N.J.A.C. 7:27C-</b>	<b>Provide on-site</b>					
<b>5.5(c)</b>	<b>access to records</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
	<b>Provide false or</b>					
<b>N.J.A.C. 7:27C-</b>	<b>misleading</b>					
<b>5.5(f)</b>	<b>information</b>	<b>NM</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>

6. The violations of N.J.A.C. 7:27C-6, CO<sub>2</sub> Allowance Tracking System (COATS), and the civil administrative penalty amounts for each violation are as set forth in the following table:

<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Subsequent Offense</u>
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		<b>Fourth and Each</b>				
<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Subsequent Offense</u>
N.J.A.C. 7:27C-6.5(c)	Submit a revised application	M	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27C-6.9(e)	Transfer required allowances	M	\$2,000	\$4,000	\$10,000	\$30,000

**7. (Reserved)**

**8. The violations of N.J.A.C. 7:27C-8, Monitoring, Recordkeeping, and Reporting, and the civil administrative penalty amounts for each violation are as set forth in the following table:**

		<b>Fourth and Each</b>				
<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Subsequent Offense</u>

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<b>Monitoring,</b>							
<b>N.J.A.C. 7:27C-</b>	<b>recordkeeping, and</b>						
<b>8.1(a)</b>	<b>reporting requirements</b>	<b>NM</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$50,000</b>	<b>\$50,000</b>	
<b>N.J.A.C. 7:27C-</b>	<b>Submit dates of</b>						
<b>8.2(h)</b>	<b>certification</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>	
<b>N.J.A.C. 7:27C-</b>	<b>Submit certification</b>						
<b>8.2(i)</b>	<b>application</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>	
<b>N.J.A.C. 7:27C-</b>							
<b>8.2(p)</b>	<b>Substitute data</b>	<b>NM</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$50,000</b>	<b>\$50,000</b>	
<b>N.J.A.C. 7:27C-</b>	<b>Certification low mass</b>						
<b>8.2(q)</b>	<b>emissions</b>	<b>NM</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$50,000</b>	<b>\$50,000</b>	
<b>N.J.A.C. 7:27C-</b>	<b>Alternate monitoring</b>						
<b>8.2(r)</b>	<b>system</b>	<b>NM</b>	<b>\$10,000</b>	<b>\$20,000</b>	<b>\$50,000</b>	<b>\$50,000</b>	

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

**8.4                      Written notice                      M                      \$2,000    \$4,000    \$10,000    \$30,000**

**Federal recordkeeping**

**N.J.A.C. 7:27C-    and reporting**

**8.5(a)                      requirements                      M                      \$2,000    \$4,000    \$10,000    \$30,000**

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

**8.5(b)                      Submit monitoring plan    M                      \$2,000    \$4,000    \$10,000    \$30,000**

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

**8.5(c)                      Submit a certified report    M                      \$2,000    \$4,000    \$10,000    \$30,000**

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

**8.7(a)                      Submit report                      M                      \$2,000    \$4,000    \$10,000    \$30,000**

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

**8.8(a)                      Submit additional data      M                      \$2,000    \$4,000    \$10,000    \$30,000**

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

**8.8(i)                      Quality control activities    M                      \$2,000    \$4,000    \$10,000    \$30,000**

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

**8.8(j)                      Retain data                      M                      \$2,000    \$4,000    \$10,000    \$30,000**

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

**8.8(k)                      Submit annual report        M                      \$2,000    \$4,000    \$10,000    \$30,000**

**9. (Reserved)**

**10. The violations of N.J.A.C. 7:27C-10, CO<sub>2</sub> Emissions Offset Projects, and the civil administrative penalty amounts for each violation are as set forth in the following table:**

					<b>Fourth and</b>	
					<b>Each</b>	
		<b>Type of</b>	<b>First</b>	<b>Second</b>	<b>Third</b>	<b>Subsequent</b>
<b><u>Citation</u></b>	<b><u>Class</u></b>	<b><u>Violation</u></b>	<b><u>Offense</u></b>	<b><u>Offense</u></b>	<b><u>Offense</u></b>	<b><u>Offense</u></b>

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<u>Citation</u>	<u>Class</u>	<u>Type of Violation</u>	<b>Fourth and Each</b>			
			<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Subsequent Offense</u>
<b>N.J.A.C. 7:27C-</b>						
<b>10.3(h)</b>	<b>Access agreement</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
<b>N.J.A.C. 7:27C-</b>						
<b>10.6(f)</b>	<b>Submit monitoring and verification report</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
<b>N.J.A.C. 7:27C-</b>						
<b>10.6(h) and (i)</b>	<b>Notify and submit report</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
<b>N.J.A.C. 7:27C-</b>						
<b>10.6(m)</b>	<b>Surrender CO<sub>2</sub> allowances</b>	<b>NM</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>
<b>N.J.A.C. 7:27C-</b>						
<b>10.6(p)3</b>	<b>Submit consistency application</b>	<b>M</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>

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							Fourth and Each
		Type of <u>Violation</u>	First <u>Offense</u>	Second <u>Offense</u>	Third <u>Offense</u>	Subsequent <u>Offense</u>	
<u>Citation</u>	<u>Class</u>						

## CHAPTER 27C

### CO<sub>2</sub> BUDGET TRADING PROGRAM

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 7:27C-1.1 Purpose

This chapter establishes the New Jersey component of the CO<sub>2</sub> Budget Trading Program, which is designed to reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources in an economically efficient manner.

##### 7:27C-1.2 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. For additional definitions related to CO<sub>2</sub> emissions offset projects, see N.J.A.C. 7:27C-10.2.

“Account number” means the identification number given by the Department to each COATS account.

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**“Acid rain emissions limitation” means, as that term is defined at 40 CFR 72.2, incorporated herein by reference, as amended and supplemented, a limitation on emissions of SO<sub>2</sub> or NO<sub>x</sub> under the Acid Rain Program under Title IV of the Clean Air Act.**

**“Acid Rain Program” means a multistate SO<sub>2</sub> and NO<sub>x</sub> air pollution control and emission reduction program established by the Administrator under Title IV of the Clean Air Act, 42 U.S.C. §§7651 et seq., and 40 CFR Parts 72 through 78.**

**"Adjustment for banked allowances" means an adjustment applied to the New Jersey CO<sub>2</sub> Budget Trading Program base budget for a particular allocation year (or years) to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO<sub>2</sub> budget sources in all of the participating states at the end of the control period immediately preceding the allocation year, and as reflected in COATS on March 15, of the year following the control period.**

**“Administrator” means the Administrator of the EPA or his or her authorized representative.**

**“Air contaminant” means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases.**

**“Allocate” or “allocation” means the determination by the Department of the number of CO<sub>2</sub> allowances to be recorded in the compliance account of a CO<sub>2</sub> budget source, the fixed price contract set-aside account, the cogeneration set-aside account, or any general account, including the consumer benefit account, and a project sponsor’s general account.**

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**“Allocation year” means a calendar year for which the Department allocates or awards CO<sub>2</sub> allowances pursuant to N.J.A.C. 7:27C-5 and 10. The allocation year of each CO<sub>2</sub> allowance is reflected in the unique identification number given to the allowance pursuant to N.J.A.C. 7:27C-6.8(c) or (d).**

**“Alternate CO<sub>2</sub> authorized account representative” or “alternate account representative” means:**

- 1. For a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO<sub>2</sub> budget units at the source, in accordance with N.J.A.C. 7:27C-2, to represent and legally bind each owner and operator in matters pertaining to the CO<sub>2</sub> Budget Trading Program; or**
- 2. For a general account, the alternate natural person who is authorized, under N.J.A.C. 7:27C-6, to transfer or otherwise dispose of CO<sub>2</sub> allowances held in the general account.**

**“Ascending price, multiple-round auction” means a multiple-round auction that starts with an opening price that increases each round by predetermined increments. In each round, a bidder offers the quantity of CO<sub>2</sub> allowances the bidder is willing to purchase at the posted price. Rounds continue as long as demand exceeds the quantity of CO<sub>2</sub> allowances offered for sale. At the completion of the final round, CO<sub>2</sub> allowances will be allocated as follows:**

- 1. At the final price to remaining bidders. Unsold CO<sub>2</sub> allowances to be withheld for a future auction;**

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**2. At the penultimate price, first to final round bidders and then to bidders in the penultimate round in chronological order of bid during the penultimate round for all remaining allowances; or**

**3. According to an alternative mechanism designed to effectuate the objectives of this chapter.**

**“Attribute” means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, State program eligibility, or other characteristic that can be identified, accounted for, and tracked.**

**“Attribute credit” means a credit that represents the attributes related to one megawatt-hour of electricity generation.**

**“Automated data acquisition and handling system” or “DAHS” means that component of the continuous emissions monitoring system (CEMS), or other emissions monitoring system approved for use under N.J.A.C. 7:27C-8, 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. 7:27C-8.**

**“Award” means the determination by the Department of the number of CO<sub>2</sub> offset allowances to be recorded in the general account of a project sponsor pursuant to N.J.A.C. 7:27C-10.9. In this sense, an award is a type of allocation. Award also means the allocation of CO<sub>2</sub> allowances to a winning bidder at a CO<sub>2</sub> allowance auction.**

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**“Beneficial interest” means profit, benefit, or advantage resulting from the ownership of a CO<sub>2</sub> allowance.**

**“Bidder” means a qualified participant who has met the requirements of N.J.A.C. 7:27C-11.6, 11.7, and 11.8 and has been determined by the Department to be eligible to participate in a specified CO<sub>2</sub> allowance auction pursuant to N.J.A.C. 7:27C-11.8.**

**“Billing meter” means the device used to measure electric or thermal output for commercial billing under a contract between the owner or owners of the facility selling the electric or thermal output and the owner or owners of the entity purchasing the electric or thermal output, where no owner of either the seller or the buyer is also an owner of the other party.**

**“Boiler” means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.**

**“British thermal unit” or “Btu” means the quantity of heat required to raise the temperature of one pound of water by one degree Fahrenheit, at the temperature at which water has its greatest density (approximately 39 degrees Fahrenheit).**

**“Certified dispatch agreement facility” means a CO<sub>2</sub> budget source that is eligible to receive a fixed price sale offer of CO<sub>2</sub> allowances from the Department pursuant to N.J.A.C. 7:27C-5.5(b).**

**“CH<sub>4</sub>” means methane.**

**“CO<sub>2</sub>” means carbon dioxide.**

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**“CO<sub>2</sub> allowance” means a limited authorization by the Department, or a participating state, under the CO<sub>2</sub> Budget Trading Program to emit up to one ton of CO<sub>2</sub>, subject to all applicable limitations contained in this chapter.**

**“CO<sub>2</sub> allowance auction” or “auction” means the sale of CO<sub>2</sub> allowances through competitive bidding as administered in accordance with N.J.A.C. 7:27C-11.**

**“CO<sub>2</sub> allowance auction website” means a website established by the Department that contains information about CO<sub>2</sub> allowance auctions, (to be added upon adoption).**

**“CO<sub>2</sub> allowance deduction” or “deduct CO<sub>2</sub> allowances” means the permanent withdrawal of CO<sub>2</sub> allowances by the Department from a compliance account to account for the number of tons of CO<sub>2</sub> emitted from a CO<sub>2</sub> budget source for a control period, the initial control period, or an interim control period, determined in accordance with N.J.A.C. 7:27C-8, or for the forfeit or retirement of CO<sub>2</sub> allowances as provided by this chapter.**

**“CO<sub>2</sub> allowance price” means the price for CO<sub>2</sub> allowances in the CO<sub>2</sub> Budget Trading Program for a particular time period as determined by the Department, calculated based on a volume-weighted average of transaction prices reported to the Department, and taking into account prices as reported publicly through reputable sources.**

**“CO<sub>2</sub> allowance tracking system” or “COATS” means the system by which the Department records allocations, deductions, and transfers of CO<sub>2</sub> allowances under the CO<sub>2</sub> Budget Trading Program. The tracking system may also be used to track CO<sub>2</sub> offset allowances, CO<sub>2</sub> allowance prices, and emissions from affected sources.**

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**“CO<sub>2</sub> allowance tracking system account” or “COATS account” means an account in the CO<sub>2</sub> allowance tracking system established by the Department for purposes of recording the allocation, holding, transfer, or deduction of CO<sub>2</sub> allowances.**

**“CO<sub>2</sub> allowance transfer deadline” means midnight of the March 1 occurring after the end of the relevant control period, the initial control period, and each relevant interim control period, or, if that March 1 is not a business day, midnight of the first business day thereafter; and also means the deadline by which CO<sub>2</sub> allowances shall be submitted for recording in a CO<sub>2</sub> budget source’s compliance account in order for the source to meet the CO<sub>2</sub> requirements of N.J.A.C. 7:27C-1.4 for the control period, the initial control period, and each interim control period immediately preceding such deadline.**

**“CO<sub>2</sub> allowances held” or “held CO<sub>2</sub> allowances” means the CO<sub>2</sub> allowances recorded by the Department, or submitted to the Department for recording, in accordance with N.J.A.C. 7:27C-6 and 7, in a COATS account.**

**“CO<sub>2</sub> authorized account representative” or “account representative” means:**

- 1. For a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO<sub>2</sub> budget units at the source, in accordance with N.J.A.C. 7:27C-2, to represent and legally bind each owner and operator in matters pertaining to the CO<sub>2</sub> Budget Trading Program; or**
- 2. For a general account, the natural person who is authorized under N.J.A.C. 7:27C-6 to transfer or otherwise dispose of CO<sub>2</sub> allowances held in the general account.**

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**Except in those cases where it would be redundant, the use of the term “CO<sub>2</sub> authorized account representative” in this chapter includes the alternate CO<sub>2</sub> authorized account representative.**

**“CO<sub>2</sub> budget emissions limitation” means, for a CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions in a control period, the initial control period, or an interim control period, of the CO<sub>2</sub> allowances available for compliance deduction for the source for the control period, the initial control period, or the interim control period.**

**“CO<sub>2</sub> budget source” means a facility that includes one or more CO<sub>2</sub> budget units.**

**“CO<sub>2</sub> Budget Trading Program” means a multistate CO<sub>2</sub> air pollution control and emissions reduction program established pursuant to this chapter and corresponding rules and regulations in other participating states as a means of reducing emissions of CO<sub>2</sub> from CO<sub>2</sub> budget sources.**

**“CO<sub>2</sub> budget unit” means a fossil fuel-fired unit that, at any time on or after January 1, 2005, served or serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe.**

**“CO<sub>2</sub> cost containment reserve allowance” or “CCR allowance” means a CO<sub>2</sub> allowance that the Department offers for sale at an auction for the purpose of containing the cost of CO<sub>2</sub> allowances. CCR allowances offered for sale at an auction are separate from, and in addition to, CO<sub>2</sub> allowances allocated from the New Jersey CO<sub>2</sub> Budget Trading Program base and adjusted budgets. CCR allowances are subject to all applicable limitations contained in this chapter.**

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**“CO<sub>2</sub> cost containment reserve trigger price” or “CCR trigger price” means the minimum price at which the Department offers CCR allowances for sale at an auction. The CCR trigger price for calendar year 2020 will be \$10.77 per CO<sub>2</sub> allowance. The CCR trigger price in calendar year 2021 will be \$13.00. Each calendar year thereafter, the CCR trigger price will be the CCR trigger price from the previous calendar year, multiplied by 1.07 and rounded to the nearest whole cent, as shown in Table 1 below.**

<b>Table 1. CCR Trigger Price</b>										
<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>
<b>\$10.77</b>	<b>\$13.00</b>	<b>\$13.91</b>	<b>\$14.88</b>	<b>\$15.92</b>	<b>\$17.03</b>	<b>\$18.22</b>	<b>\$19.50</b>	<b>\$20.87</b>	<b>\$22.33</b>	<b>\$23.89</b>

**“CO<sub>2</sub> emissions containment reserve allowance” or “ECR allowance” means a CO<sub>2</sub> allowance that the Department withholds from sale at an auction for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.**

**“CO<sub>2</sub> emissions containment reserve trigger price” or “ECR trigger price” means the price below which the Department will withhold CO<sub>2</sub> allowances from sale at an auction. The ECR trigger price in calendar year 2021 will be \$6.00. Each calendar year thereafter, the ECR trigger price will be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 2.**

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<b>Table 2. ECR Trigger Price</b>									
<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>
<b>\$6.00</b>	<b>\$6.42</b>	<b>\$6.87</b>	<b>\$7.35</b>	<b>\$7.86</b>	<b>\$8.41</b>	<b>\$9.00</b>	<b>\$9.63</b>	<b>\$10.30</b>	<b>\$11.02</b>

**“CO<sub>2</sub> equivalent” means the quantity of a given greenhouse gas multiplied by its global warming potential (GWP).**

**“CO<sub>2</sub> offset allowance” means a CO<sub>2</sub> allowance that is awarded to a project sponsor pursuant to N.J.A.C. 7:27C-10.9 and is subject to the relevant compliance deduction limitations of N.J.A.C. 7:27C-6.9(a)3.**

**“Cogeneration set-aside account” means a general account established by the Department for the allocation of allowances for retirement in an amount equal to the adjustment of the compliance obligation of a cogeneration unit pursuant to N.J.A.C. 7:27C-5.3.**

**“Cogeneration unit” means an electric-generating unit that uses a steam-generating unit or stationary combustion turbine to simultaneously produce both electric (or mechanical) and useful thermal energy from the same primary energy facility.**

**“Combined cycle system” means a system comprised of one or more of each of the following configured to improve overall efficiency of electricity generation or steam production:**

- 1. Combustion turbine;**

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**2. Heat recovery steam generator; and**

**3. Steam turbine.**

**“Combustion turbine” means an enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.**

**“Commence commercial operation” means, with regard to a unit that serves a generator, to begin to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO<sub>2</sub> budget unit on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO<sub>2</sub> budget unit on the date the unit commences commercial operation, the date the unit becomes a CO<sub>2</sub> budget unit shall be the unit's date of commencement of commercial operation, even if the unit is subsequently modified, reconstructed, or repowered.**

**“Commence operation” means to begin any mechanical, chemical, or electronic process including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO<sub>2</sub> budget unit on the date of commencement of operation, such date shall remain the unit's date of commencement of operation, even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO<sub>2</sub> budget unit on the date of commencement of operation, the date the unit becomes a CO<sub>2</sub> budget unit shall be the unit's**

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**date of commencement of operation, even if the unit is subsequently modified, reconstructed, or repowered.**

**“Compliance account” means a COATS account, established by the Department for a CO<sub>2</sub> budget source under N.J.A.C. 7:27C-6, in which the CO<sub>2</sub> allowance allocations for the source are initially recorded and in which are held CO<sub>2</sub> allowances available for use by the source for a control period, the initial control, or an interim control period for the purpose of meeting the CO<sub>2</sub> requirements of N.J.A.C. 7:27C-1.4.**

**“Compliance obligation” means the number of CO<sub>2</sub> allowances required to account for the number of tons of CO<sub>2</sub> emitted from a CO<sub>2</sub> budget source for a control period, the initial control period, or an interim control period, determined in accordance with N.J.A.C. 7:27C-8, before any adjustment pursuant to N.J.A.C. 7:27C-5.3.**

**“Consumer benefit account” means the general account established by the Department from which CO<sub>2</sub> allowances will be sold or auctioned.**

**“Continuous emissions monitoring system” or “CEMS” means the equipment required under N.J.A.C. 7:27C-8 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75 and N.J.A.C. 7:27C-8. The following are examples of the types of CEMS that may be used to comply with N.J.A.C. 7:27C-8:**

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- 1. A flow-monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);**
- 2. A NO<sub>x</sub> emissions rate (or NO<sub>x</sub>-diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (CO<sub>2</sub> or O<sub>2</sub>) monitor, and an automated data acquisition and handling system, that provides a permanent, continuous record of NO<sub>x</sub> concentration, in parts per million (ppm), diluent gas concentration, in percent CO<sub>2</sub> or O<sub>2</sub>, and NO<sub>x</sub> emissions rate, in pounds per million British thermal units (lb/MMBtu);**
- 3. A moisture-monitoring system, as defined in 40 CFR 75.11(b)(2), which is incorporated herein by reference, as amended and supplemented, that provides a permanent, continuous record of the stack gas moisture content, in percent H<sub>2</sub>O;**
- 4. A CO<sub>2</sub>-monitoring system, consisting of a CO<sub>2</sub> pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated data acquisition and handling system, that provides a permanent, continuous record of CO<sub>2</sub> emissions, in percent CO<sub>2</sub>; and**
- 5. An O<sub>2</sub>-monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated data acquisition and handling system, that provides a permanent, continuous record of O<sub>2</sub>, in percent O<sub>2</sub>.**

**“Control period” means a three-calendar-year period. The first control period is from January 1, 2021, through December 31, 2023, inclusive. Each subsequent sequential three-calendar-year period is a separate control period.**

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**“Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Annual Trading Program” means a multistate NO<sub>x</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97, subpart AAAAA and 40 CFR 52.38(a) (including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.38(a)(5)), as a means of mitigating interstate transport of fine particulates and NO<sub>x</sub>.**

**“Cross State Air Pollution Rule (CSAPR) NO<sub>x</sub> Ozone Season Trading Program” means a multistate NO<sub>x</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97, subpart BBBBB and 40 CFR 52.38(b) (including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.38(b)(5)), as a means of mitigating interstate transport of ozone and NO<sub>x</sub>.**

**“Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 1 Trading Program” means a multistate SO<sub>2</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97 subpart CCCCC and 40 CFR 52.39(a), (b), (d), (e), (f), (j), and (k) (including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.39(f)), as a means of mitigating interstate transport of fine particulates and SO<sub>2</sub>.**

**“Cross State Air Pollution Rule (CSAPR) SO<sub>2</sub> Group 2 Trading Program” means a multistate SO<sub>2</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97 subpart DDDDD and 40 CFR 52.39(a), (c), and (g) through (k)**

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**(including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.39(i)), as a means of mitigating interstate transport of fine particulates and SO<sub>2</sub>.**

**“Department” means the New Jersey Department of Environmental Protection. When used in N.J.A.C. 7:27C-11, “Department” also means the agent, if any, to which the Department delegates implementation and administrative support functions for a CO<sub>2</sub> allowance auction pursuant to N.J.A.C. 7:27C-11.1(b).**

**“Descending price, multiple-round auction” means a multiple-round auction that starts with a high provisional price, which falls in each round by predetermined increments. In each round, a bidder can lock in the purchase of some number of CO<sub>2</sub> allowances at the current provisional price and/or wait for the price to fall. Rounds continue so long as the number of CO<sub>2</sub> allowances locked-in is less than the quantity of CO<sub>2</sub> allowances offered for sale.**

**“Discriminatory price, sealed-bid auction” means a single-round, sealed-bid auction in which a bidder may submit multiple bids for CO<sub>2</sub> allowances at different prices. The price(s) paid by winning bidders with the highest bids for CO<sub>2</sub> allowances is their own bid price(s).**

**“Dispatch agreement facility” means a CO<sub>2</sub> budget source that meets the criteria at N.J.A.C. 7:27C-5.5(b).**

**“Distillates of air” means helium (He), nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>), neon (Ne), argon (Ar), krypton (Kr), and xenon (Xe).**

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**“Electronic submission agent” means a natural person to whom the CO<sub>2</sub> authorized account representative, or his or her alternate, has delegated the authority to make an electronic submission to the Department on his or her behalf, as further described at N.J.A.C. 7:27C-2.6 and 6.7.**

**“Eligible biomass” means the following sustainably harvested woody and herbaceous fuel sources, that are available on a renewable or recurring basis (excluding old-growth timber): dedicated energy crops and trees, agricultural food residues and feed crop residues, aquatic plants, unadulterated wood and wood residues, animal wastes, other clean organic wastes not mixed with other solid wastes, biogas, and other neat liquid biofuels derived from such fuel sources. Whether a fuel source is sustainably harvested will be determined by the Department based on an evaluation of the environmental sustainability of harvesting practices applicable to the biomass feedstock, taking into consideration pest management, fertilizer and nutrient use, crop rotation practices, water use and pollution management, soil management, and forest management.**

**“EPA” means the United States Environmental Protection Agency.**

**“Excess emissions” means the tonnage of CO<sub>2</sub> emitted by a CO<sub>2</sub> budget source during a control period or initial control period that exceeds the CO<sub>2</sub> budget emissions limitation for the source.**

**“Excess interim emissions” means 50 percent of the tonnage of CO<sub>2</sub> emitted by a CO<sub>2</sub> budget source during an interim control period that exceeds the CO<sub>2</sub> budget emissions limitation for the source.**

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**"Facility" means the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons.**

**"Facility code" means a five-digit code assigned by the Energy Information Agency at the United States Department of Energy to a power plant that is not owned by an electric utility.**

**"Fixed price contract set-aside account" means a general account established by the Department for the allocation of allowances for direct sale pursuant to N.J.A.C. 7:27C-5.5.**

**"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.**

**"Fossil fuel-fired" means:**

- 1. With regard to a unit that commenced operation prior to January 1, 2005, the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 50 percent of the annual heat input on a Btu basis during any year; and**

- 2. With regard to a unit that commenced or commences operation on or after January 1, 2005, the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than five percent of the annual heat input on a Btu basis during any year.**

**"General account" means a COATS account established by the Department under N.J.A.C. 7:27C-6, other than a compliance account. A general account can be used for the**

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**receipt, transfer, and banking of CO<sub>2</sub> allowances in COATS, but cannot be used for a CO<sub>2</sub> allowance compliance deduction.**

**“Global warming potential” or “GWP” means a measure of the radiative efficiency (heat-absorbing ability) of a particular gas relative to that of CO<sub>2</sub> after taking into account the decay rate of each gas (the amount removed from the atmosphere over a given number of years) relative to that of CO<sub>2</sub>. Global warming potentials used in this chapter are consistent with the values used in the Intergovernmental Panel on Climate Change, Fifth Assessment Report.**

**“Gross generation” means the electrical output (in MWe) at the terminals of a generator.**

**“Initial control period” means the calendar-year period from January 1, 2020, through December 31, 2020, inclusive, which is the third year of the fourth control period and the initial year of New Jersey’s participation in the CO<sub>2</sub> Budget Trading Program.**

**“Interim control period” means the one-calendar-year period, during each of the first and second calendar years of each control period. The first interim control period is from January 1, 2021, through December 31, 2021, inclusive. The second interim control period is from January 1, 2022, through December 31, 2022, inclusive. Each successive three-year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.**

**“Hr” means hour.**

**“Lb” means pound.**

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**“Life-of-the-unit contractual arrangement” means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and/or associated energy from any specified unit pursuant to a contract for:**

- 1. The life of the unit;**
- 2. A cumulative term of no less than 30 years, including a contract that permits an election for early termination; or**
- 3. A period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.**

**“Maximum potential hourly heat input” means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If 40 CFR Part 75 Appendix D is used to report a unit’s heat input, this is the value calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If a flow monitor and a diluent gas monitor are used for the unit, this is the value reported, in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum CO<sub>2</sub> concentration (in percent CO<sub>2</sub>) or the minimum O<sub>2</sub> concentration (in percent O<sub>2</sub>).**

**“Minimum reserve price” means, for calendar year 2020, \$2.32. Each calendar year thereafter, the minimum reserve price will be the minimum reserve price from the previous calendar year, multiplied by 1.025 and rounded to the nearest whole cent.**

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**“Monitoring system” means any monitoring system that meets the requirements of N.J.A.C. 7:27C-8, including a CEMS, an excepted monitoring system, or an alternative monitoring system.**

**“MMBtu” means million Btu.**

**“MWe” means megawatt electrical.**

**“MWh” means megawatt hours.**

**“Nameplate capacity” means the maximum electrical output in MWe that a generator can sustain over a specified period of time, under specific conditions designated by the manufacturer, when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.**

**“Net electric output” means the gross amount of electricity generation a generator produces (including, but not limited to, output from steam turbines, combustion turbines, and gas expanders), as measured at the generator terminals, less the electricity used to operate the plant (that is, auxiliary loads); such uses include fuel-handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step-up transformer (for example, the point of sale).**

**“New Jersey CO<sub>2</sub> Budget Trading Program adjusted budget” means the annual amount of CO<sub>2</sub> tons available in New Jersey for allocation in a given allocation year, in accordance with the CO<sub>2</sub> Budget Trading Program, determined in accordance with N.J.A.C. 7:27C-5. CO<sub>2</sub> offset allowances allocated to project sponsors and CCR allowances offered for sale at an auction are separate from and in addition to CO<sub>2</sub> allowances allocated from the New Jersey CO<sub>2</sub> Budget Trading Program adjusted budget.**

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**“New Jersey CO<sub>2</sub> Budget Trading Program base budget” means the annual number of CO<sub>2</sub> tons available in New Jersey for allocation in a given allocation year, in accordance with the CO<sub>2</sub> Budget Trading Program and as specified at N.J.A.C. 7:27C-5.1. CO<sub>2</sub> offset allowances awarded to project sponsors and CCR allowances offered for sale at an auction are separate from and in addition to CO<sub>2</sub> allowances allocated from the New Jersey CO<sub>2</sub> Budget Trading Program base budget.**

**“New York Independent System Operator” or “NYISO” means the not-for-profit corporation, or any successor organization, responsible for operating New York State's bulk electricity grid, administering New York State's competitive wholesale electricity markets, and conducting comprehensive long-term planning for New York State's electric power system serving New York State. NYISO is the Federally designated electric bulk system operator in New York State.**

**“Non-CO<sub>2</sub> budget unit” means a unit that does not meet the definition of “CO<sub>2</sub> budget unit.”**

**“Notice of CO<sub>2</sub> allowance auction” means the notification for a specific auction or auctions issued pursuant to N.J.A.C. 7:27C-11.5.**

**“NO<sub>x</sub>” means nitrogen oxides.**

**“O<sub>2</sub>” means oxygen.**

**“Operator” means any person who operates, controls, or supervises a CO<sub>2</sub> budget unit or a CO<sub>2</sub> budget source and includes, but is not limited to, any holding company, utility system, or plant manager of such a unit or source.**

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**“ORIS code” means a four-digit number assigned by the Energy Information Agency at the United States Department of Energy to power plants owned by electric utilities.**

**“Owner” means any of the following:**

**1. The holder of any portion of the legal or equitable title in a CO<sub>2</sub> budget unit or a CO<sub>2</sub> budget source;**

**2. The holder of a leasehold interest in a CO<sub>2</sub> budget unit or CO<sub>2</sub> budget source. This does not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO<sub>2</sub> budget unit;**

**3. The purchaser of power from a CO<sub>2</sub> budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or**

**4. With respect to any general account, any person who has an ownership interest with respect to the CO<sub>2</sub> allowances held in the general account and who is subject to the binding agreement for the CO<sub>2</sub> authorized account representative to represent that person’s ownership interest with respect to the CO<sub>2</sub> allowances.**

**“Participating state” means a state or jurisdiction that has adopted corresponding rules, regulations, or statutes as part of the CO<sub>2</sub> Budget Trading Program.**

**“Person” means any individual or entity and includes, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of this State or any agencies or instrumentalities thereof.**

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**“PJM Interconnection, LLC” or “PJM” means the regional transmission organization, or its successor, that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.**

**“Qualified participant” means a person who has submitted a qualification application pursuant to N.J.A.C. 7:27C-11.8(a) and that the Department determines to be qualified to participate in CO<sub>2</sub> allowance auctions pursuant to N.J.A.C. 7:27C-11.8(e).**

**“Receive” or “receipt of” means, when referring to the Department, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department in the regular course of business.**

**“Recording, record, or recorded” means, with regard to CO<sub>2</sub> allowances, the movement of CO<sub>2</sub> allowances by the Department from one COATS account to another, for purposes of allocation, transfer, or deduction.**

**“Reserve price” means the minimum acceptable price for each CO<sub>2</sub> allowance offered for sale in a specific CO<sub>2</sub> allowance auction. The reserve price at an auction is either the minimum reserve price, as defined in this section, or the CCR trigger price, as specified in Table 1 in the definition of “CO<sub>2</sub> cost containment reserve trigger price” and N.J.A.C. 7:27C-9. In no event will the reserve price be lower than the minimum reserve price.**

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**“Reviewer” means a natural person to whom the CO<sub>2</sub> authorized account representative or his or her alternate has delegated the authority to review information in COATS on his or her behalf, as further described at N.J.A.C. 7:27C-2.6.**

**“Serial number” means, when referring to CO<sub>2</sub> allowances, the unique identification number assigned to each CO<sub>2</sub> allowance by the Department under N.J.A.C. 7:27C-6.8(c) and (d).**

**“Set-aside account” is a general account established by the Department into which allowances can be allocated for direct sale to certified dispatch agreement facilities with fixed-price contracts pursuant to N.J.A.C. 7:27C-5.5, or to be retired for the compliance obligation adjustment of a cogeneration unit pursuant to N.J.A.C. 7:27C-5.3.**

**“Source” means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits, or has the potential to emit, any air contaminant. A source, including a source with multiple units, is considered a single facility.**

**“SO<sub>2</sub>” means sulfur dioxide.**

**“State” when spelled with a lower case “s” (as in “state”) means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, and includes the Commonwealth of the Northern Mariana Islands. “State” when spelled with an upper case “S” (as in “State”) means New Jersey.**

**“Submit” or “serve” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable rules or regulations in the following manner:**

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**1. In person;**

**2. By United States Postal Service; or**

**3. By other commonly accepted means of dispatch or transmission and delivery. Compliance with any “submission,” “service,” or “mailing” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.**

**“Third adjustment for banked allowances” means an adjustment applied to the New Jersey CO<sub>2</sub> Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO<sub>2</sub> budget sources in all of the participating states at the end of the control period in 2020 and as reflected in COATS on March 15, 2021.**

**“Ton” or “tonnage” means a short ton (2,000 pounds or 0.9072 metric tons).**

**“Undistributed CO<sub>2</sub> allowances” means CO<sub>2</sub> allowances originally allocated to a fixed-price contract set-aside account pursuant to N.J.A.C. 7:27C-5.5 that were not distributed.**

**“Uniform-price, sealed-bid auction” means a single-round, sealed-bid auction in which a bidder may submit multiple bids at different prices. The price paid by all successful bidders will be uniform and equal to the highest rejected bid price.**

**“Unit” means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.**

**“Unit-operating day” means a calendar day in which a unit combusts any fuel.**

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**“Unsold CO<sub>2</sub> allowance” means a CO<sub>2</sub> allowance that has been made available for sale in an auction conducted by the Department, but is not sold in such auction.**

**“Useful thermal energy” means, with regard to a cogeneration unit, thermal energy that is:**

- 1. Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;**
- 2. Used in a heating application (for example, space heating or domestic hot water heating); or**
- 3. Used in a space cooling application (that is, thermal energy used by an absorption chiller).**

#### **7:27C-1.3 Applicability and exemption**

**(a) The requirements of this chapter apply to any CO<sub>2</sub> budget unit or CO<sub>2</sub> budget source.**

**(b) Notwithstanding (a) above, a CO<sub>2</sub> budget source for which the Department has issued an operating permit containing a condition restricting the supply of the unit’s annual electrical output to the electric grid to no more than 10 percent of the unit’s annual gross electric generation, and that complies with (d) through (g) below, is exempt from the requirements of this chapter, except for the provisions of this section, N.J.A.C. 7:27C-1.6 and 8.8, and, if applicable because of the allocation of CO<sub>2</sub> allowances during the pre-exemption time period, N.J.A.C. 7:27C-5, 6, and 7.**

**(c) The exemption under (b) above becomes effective as of the January 1 that is on or after the date on which the restriction on the percentage of annual gross generation that may be**

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**supplied to the electric grid and the provisions in the permit required at (b) above become final.**

**(d) A CO<sub>2</sub> budget unit exempt under (b) above shall comply with the restriction on the percentage of annual gross electric generation that may be supplied to the electric grid described in (b) above.**

**(e) A CO<sub>2</sub> budget unit exempt under (b) above shall report to the Department, in accordance with the applicable provisions at N.J.A.C. 7:27C-8.8, the amount of annual gross electric generation and the amount of annual gross electric generation supplied to the electric grid during the year by February 1 of the following year.**

**(f) For a period of 10 years from the date the records are created, the owners and operators of a unit exempt under (b) above shall retain, at the source that includes the unit, records demonstrating that the conditions of the permit under (b) were met. At any time prior to the end of the period, the Department may, in writing, extend the 10-year period for keeping records if it determines a longer retention period is necessary to demonstrate compliance with permit conditions. The owners and operators bear the burden of proof that the unit met the restriction on the percentage of annual gross electric generation that may be supplied to the electric grid.**

**(g) The owners and operators and, to the extent applicable, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit exempt under (b) above shall comply with all the requirements of this chapter concerning all time periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.**

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**(h) A CO<sub>2</sub> budget unit exempt under (b) above will lose its exemption upon the occurrence of either of the following:**

**1. The restriction on the percentage of annual gross generation that may be supplied to the electric grid described in (b) above is removed from the unit's permit or otherwise becomes no longer applicable in any year that commences on or after January 1, 2020; or**

**2. The unit fails to comply or the owners and operators fail to meet their burden of proving that the unit is complying with the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in (b) above during any year that commences on or after January 1, 2020.**

**(i) For the purposes of this chapter, the date of commencement of operation for a unit that loses its exemption pursuant to (h) above will be the date the unit loses its exemption.**

#### **7:27C-1.4 General provisions**

**(a) The owner and operator of each CO<sub>2</sub> budget source required to have an operating permit pursuant to N.J.A.C. 7:27-22 shall:**

**1. Submit to the Department a complete application for a new, renewed, or modified operating permit under N.J.A.C. 7:27C-3.3 in accordance with the deadlines specified in N.J.A.C. 7:27C-3.2; and**

**2. Submit in a timely manner any supplemental information that the Department determines is necessary to review the operating permit application and issue or deny an operating permit, permit renewal, or permit modification that includes CO<sub>2</sub> Budget Trading Program requirements.**

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**(b) The owner and operator of each CO<sub>2</sub> budget source required to have an operating permit pursuant to N.J.A.C. 7:27-22 shall ensure that the operating permit incorporates the requirements of the CO<sub>2</sub> Budget Trading Program and shall operate the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source in compliance with such operating permit.**

**(c) The owner and operator and, to the extent applicable, the CO<sub>2</sub> authorized account representative of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, shall comply with the monitoring requirements of N.J.A.C. 7:27C-8.**

**(d) The Department will use the emissions measurements recorded and reported in accordance with N.J.A.C. 7:27C-8 to determine the unit's compliance with the CO<sub>2</sub> requirements under (f) below. For the purpose of determining compliance with (f) below, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with N.J.A.C. 7:27C-8. The Department will round total CO<sub>2</sub> emissions to the nearest whole ton, so that any fraction of a ton equal to or greater than 0.50 tons is deemed to equal one ton and any fraction of a ton less than 0.50 tons is deemed to equal zero tons.**

**(e) A CO<sub>2</sub> budget unit is subject to the requirements of (f) below starting on January 1, 2020, or the date on which the unit commences operation, whichever is later.**

**(f) The owners and operators of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall, as of the CO<sub>2</sub> allowance transfer deadline, hold CO<sub>2</sub> allowances in the source's compliance account, available for compliance deductions under N.J.A.C. 7:27C-6.9, as follows:**

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**1. In the case of an initial control period, the number of CO<sub>2</sub> allowances held shall be no less than an amount equivalent to the total CO<sub>2</sub> emissions for the initial control period from all CO<sub>2</sub> budget units at the source;**

**2. In the case of a control period, the number of CO<sub>2</sub> allowances held shall be no less than the total CO<sub>2</sub> emissions for the control period from all CO<sub>2</sub> budget units at the source, less the CO<sub>2</sub> allowances deducted to meet the requirements of (g) below, with respect to the previous two interim control periods, as determined in accordance with N.J.A.C. 7:27C-6 and 8; and**

**3. In the case of an interim control period, the number of CO<sub>2</sub> allowances held shall be no less than the total CO<sub>2</sub> emissions for the interim control period from all CO<sub>2</sub> budget units at the source multiplied by 0.50, as determined in accordance with N.J.A.C. 7:27C-6 and 8.**

**(g) Each ton of CO<sub>2</sub> emitted in excess of the CO<sub>2</sub> budget emissions limitation for a control period or an initial control period constitutes a separate violation of this subchapter and applicable State law.**

**(h) Each ton of excess interim emissions constitutes a separate violation of this chapter and applicable State law.**

**(i) CO<sub>2</sub> allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with N.J.A.C. 7:27C-5, 6, and 7.**

**(j) A CO<sub>2</sub> allowance shall not be deducted, in order to comply with (f) above, for a control period that ends prior to the year for which the CO<sub>2</sub> allowance was allocated.**

**(k) A CO<sub>2</sub> offset allowance shall not be deducted, in order to comply with (f) above, beyond the applicable percent limitations at N.J.A.C. 7:27C-6.9(a)3.**

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**(l) A CO<sub>2</sub> allowance is a limited authorization by the Department or a participating state to emit one ton of CO<sub>2</sub> in accordance with the CO<sub>2</sub> Budget Trading Program. No provision of the CO<sub>2</sub> Budget Trading Program, this chapter, an application for a new, renewed, or modified operating permit to incorporate the requirements of the CO<sub>2</sub> Budget Trading Program, an operating permit that includes the requirements of the CO<sub>2</sub> Budget Trading Program, or any provision of law shall be construed to limit the authority of the Department or a participating state to terminate or limit such authorization.**

**(m) A CO<sub>2</sub> allowance under the CO<sub>2</sub> Budget Trading Program does not constitute a property right.**

**(n) The owners and operators of a CO<sub>2</sub> budget source that has excess emissions in any control period or the initial control period or excess interim emissions in any interim control period, shall:**

- 1. Forfeit the CO<sub>2</sub> allowances required for deduction under N.J.A.C. 7:27C-6.9(e);**
- 2. Not use any CO<sub>2</sub> offset allowances to cover any part of such excess emissions; and**
- 3. Pay any fine, penalty, or assessment or comply with any other remedy imposed**

**under N.J.A.C. 7:27C-6.9(f).**

**(o) Except as provided under (o)1 below, the owners and operators of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall keep on site at the source each of the documents set forth in (o)1 through 4 below for a period of 10 years from the date the document is created. The Department may at any time prior to the end of the 10-year period extend the 10-year period in writing, if it determines that retention of the documents beyond**

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**the 10-year period is necessary to determine compliance with the requirements of this chapter:**

**1. The account certificate of representation for the CO<sub>2</sub> authorized account representative for the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with N.J.A.C. 7:27C-2.4, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded by a newly submitted account certificate of representation changing the CO<sub>2</sub> authorized account representative;**

**2. All emissions monitoring information, in accordance with N.J.A.C. 7:27C-8 and 40 CFR 75.57;**

**3. Copies of all reports, compliance certifications, and other submissions, and all records made or required under the CO<sub>2</sub> Budget Trading Program; and**

**4. Copies of all documents used to complete an application for a new or modified operating permit that incorporates the requirements of the CO<sub>2</sub> Budget Trading Program and any other submission under the CO<sub>2</sub> Budget Trading Program or to demonstrate compliance with the requirements of the CO<sub>2</sub> Budget Trading Program.**

**(p) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall submit the reports and compliance certifications required under this chapter, including the requirements at N.J.A.C. 7:27C-4.**

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**(q) A renewal or modification of the operating permit of a CO<sub>2</sub> budget source will not cure a violation of the requirements of this chapter if that renewal or modification is effective after the violation occurs.**

**(r) Each provision of this chapter that applies to a CO<sub>2</sub> budget source or to the source's CO<sub>2</sub> authorized account representative also applies to the owners and operators of such source and of each CO<sub>2</sub> budget units at the source.**

**(s) Each provision of this chapter that applies to a CO<sub>2</sub> budget unit or to the unit's CO<sub>2</sub> authorized account representative also applies to the owners and operators of such unit.**

**(t) No provision of the CO<sub>2</sub> Budget Trading Program, this chapter, an application for a new, renewed, or modified operating permit to incorporate the requirements of the CO<sub>2</sub> Budget Trading Program, or an operating permit that includes the requirements of the CO<sub>2</sub> Budget Trading Program, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO<sub>2</sub> authorized account representative, from compliance with any other provisions of applicable State or Federal law, rules, or regulations.**

#### **7:27C-1.5 Computation of time**

**(a) Unless otherwise stated, any time period scheduled, pursuant to this chapter, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.**

**(b) Unless otherwise stated, any time period scheduled, pursuant to this chapter, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.**

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**(c) Unless otherwise stated, if the final day of any time period, pursuant to this chapter, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.**

**7:27C-1.6 Appeal procedure**

**(a) A person who believes himself or herself to be aggrieved with respect to a decision made by the Department pursuant to this chapter may appeal the decision within 20 calendar days after the date of the decision and request an adjudicatory hearing.**

**(b) Requests for an adjudicatory hearing shall be submitted to:**

**Office of Legal Affairs**

**ATTENTION: Adjudicatory Hearing Requests**

**Department of Environmental Protection**

**Office of Legal Affairs**

**Mail Code 401-04L**

**401 East State Street, 7th Floor**

**PO Box 402**

**Trenton, New Jersey 08625-0402**

**(c) All requests for an administrative hearing shall be submitted to the Department in writing on a hearing request form available from the Department and shall contain:**

**1. The name, address, and telephone number of the person making the request and the person's relationship to the applicant;**

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**2. When the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant;**

**3. A statement of the legal authority and jurisdiction under which the request for a hearing is made;**

**4. A brief and clear statement of the Department decision being appealed, indicating the specific grounds for the applicant's appeal and the applicant's defenses to each of the Department's findings of fact in the notice or decision;**

**5. A copy of the Department notice or decision for which a hearing is being requested;**

**6. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue shall also be included;**

**7. An admission or denial of each of the Department's findings of fact in the notice or decision. If the applicant is without knowledge or information sufficient to form a belief as to the truth of a finding, the applicant shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the applicant intends in good faith to deny only a part or a qualification of a finding, the applicant shall specify so much of it as is true and material and deny only the remainder. The applicant may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the applicant denies, the applicant shall allege the fact or facts as the applicant believes it or them to be;**

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**8. All information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, the request shall specifically reference such information);**

**9. An estimate of the time for the hearing (in days and/or hours); and**

**10. A request, if necessary, for a barrier-free hearing location for physically disabled persons.**

**(d) The Department will deny any hearing request if it is not received within 20 calendar days after the date of the Department decision being appealed.**

**(e) The Department may deny any hearing request if the applicant or interested party fails to include all the information required under (c) above.**

**(f) Following receipt of a complete request for a hearing pursuant to (c) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings, and conferences as it deems appropriate.**

**(g) If the Department determines that the matter is a contested case, the Department will transfer the matter for an administrative hearing to the Office of Administrative Law. Such a hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. In making such determination, the Department will evaluate the request to determine whether a contested case exists and whether there are issues of fact, which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the Department will deny the request. Denial by the**

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**Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.**

**(h) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14B-3.1 through 3.3.**

**(i) As part of a request for an adjudicatory hearing, a person may request that the Department determine whether the matter for which the adjudicatory hearing is requested is suitable for mediation by the Department's Office of Dispute Resolution. The Department will promptly notify the requester of its determination. If the Department determines the matter is suitable for mediation, it will also notify the requester of the procedures and schedule for mediation.**

#### **7:27C-1.7 Severability**

**If any provision of this chapter, or the application thereof to any person or circumstance, is adjudicated to be invalid or unenforceable to any extent, the remainder of this chapter, or its application to any person or circumstance other than those that are the subject of the adjudication, shall continue to be unaffected by the adjudication.**

### **SUBCHAPTER 2. CO<sub>2</sub> AUTHORIZED ACCOUNT REPRESENTATIVE OF A CO<sub>2</sub> BUDGET SOURCE**

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**7:27C-2.1 Authorization and responsibilities of the CO<sub>2</sub> authorized account representative for a compliance account**

**(a) Except as provided under N.J.A.C. 7:27C-2.2, each CO<sub>2</sub> budget source, including all CO<sub>2</sub> budget units at the source, shall have one and only one CO<sub>2</sub> authorized account**

**representative, with regard to all matters regulated by this chapter concerning the source or any CO<sub>2</sub> budget unit at the source.**

**(b) The CO<sub>2</sub> authorized account representative shall be selected pursuant to an agreement binding on the owners and operators of the source and all CO<sub>2</sub> budget units at the source and shall act in accordance with the certificate of representation under N.J.A.C. 7:27C-2.4.**

**(c) If the CO<sub>2</sub> budget source is also subject to the Acid Rain Program, the CSAPR NO<sub>x</sub> Annual Trading Program, the CSAPR NO<sub>x</sub> Ozone Season Trading Program, or the CSAPR SO<sub>2</sub> Group 1 or Group 2 Trading Program, then the CO<sub>2</sub> authorized account representative shall be the same as the designated representative for the aforementioned programs.**

**(d) Upon receipt by the Department of a complete account certificate of representation under N.J.A.C. 7:27C-2.4, the CO<sub>2</sub> authorized account representative shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CO<sub>2</sub> budget source represented and each CO<sub>2</sub> budget unit at the source in all matters pertaining to the CO<sub>2</sub> Budget Trading Program, notwithstanding any agreement between the CO<sub>2</sub> authorized account representative and such owner and operator. The owners and operators shall be bound by any decision or order regarding the source or unit issued to the CO<sub>2</sub> authorized account representative by the Department or a court of competent jurisdiction regarding the source or unit.**

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**(e) The Department will issue an operating permit that incorporates the requirements of the CO<sub>2</sub> Budget Trading Program pursuant to N.J.A.C. 7:27C-1.4 and otherwise complies with N.J.A.C. 7:27-22 and establish a COATS account for a CO<sub>2</sub> budget source only after it has received a complete account certificate of representation that complies with N.J.A.C. 7:27C-2.4 for a CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source.**

**(f) Each submission under the CO<sub>2</sub> Budget Trading Program shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative for each CO<sub>2</sub> budget source on behalf of which the submission is made. Each such submission shall include the following certification by the CO<sub>2</sub> authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO<sub>2</sub> budget sources or CO<sub>2</sub> 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."**

**(g) The Department will accept or act on a submission made on behalf of the owner or operator of a CO<sub>2</sub> budget source or a CO<sub>2</sub> budget unit only if the submission has been made, signed, and certified in accordance with (f) above.**

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**7:27C-2.2      Alternate CO<sub>2</sub> authorized account representative**

**(a) An account certificate of representation shall designate one and only one alternate CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source to act on behalf of the CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source.**

**(b) The agreement by which the alternate CO<sub>2</sub> authorized account representative is selected shall include a procedure for authorizing the alternate CO<sub>2</sub> authorized account representative to act in lieu of the CO<sub>2</sub> authorized account representative.**

**(c) If the CO<sub>2</sub> budget source is also subject to the Acid Rain Program, the CSAPR NO<sub>x</sub> Annual Trading Program, the CSAPR NO<sub>x</sub> Ozone Season Trading Program, or the CSAPR SO<sub>2</sub> Group 1 or Group 2 Trading Program, then the alternate CO<sub>2</sub> authorized account representative shall be the same as the designated representative for the aforementioned programs.**

**(d) Upon receipt by the Department of a complete account certificate of representation under N.J.A.C. 7:27C-2.4, any representation, action, inaction, or submission by the alternate CO<sub>2</sub> authorized account representative will be deemed to be a representation, action, inaction, or submission by the CO<sub>2</sub> authorized account representative.**

**7:27C-2.3      Changing the CO<sub>2</sub> authorized account representative and the alternate CO<sub>2</sub> authorized account representative; changes in the owners and operators**

**(a) The CO<sub>2</sub> authorized account representative or his or her alternate may be changed at any time by submitting a superseding complete account certificate of representation to the Department, pursuant to N.J.A.C. 7:27C-2.4. The change in the CO<sub>2</sub> authorized account representative or his or her alternate is effective upon receipt by the Department of the**

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**superseding complete account certificate of representation. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative or his or her alternate prior to the time and date that the Department receives the superseding account certificate of representation shall be binding on the new CO<sub>2</sub> authorized account representative and the new alternate CO<sub>2</sub> authorized account representative and the owners and operators of the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source.**

**(b) In the event a new owner or operator of a CO<sub>2</sub> budget source or a CO<sub>2</sub> budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator is deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the CO<sub>2</sub> authorized account representative and any alternate CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source or CO<sub>2</sub> budget unit, and the decisions, orders, actions, and inactions of the Department, as if the new owner or operator were included in such list.**

**(c) Within 30 days following any change in the owners and operators of a CO<sub>2</sub> budget source or a CO<sub>2</sub> budget unit, including the addition of a new owner or operator, the CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source or alternate CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.**

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**7:27C-2.4 Account certificate of representation**

**(a) A complete account certificate of representation for a CO<sub>2</sub> authorized account**

**representative shall include the following, in a format prescribed by the Department:**

**1. Identification of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source for which the account certificate of representation is submitted;**

**2. The name, address, e-mail address, telephone number, and facsimile transmission number of the CO<sub>2</sub> authorized account representative and any alternate CO<sub>2</sub> authorized account representative;**

**3. A list of the owners and operators of the CO<sub>2</sub> budget source and of each CO<sub>2</sub> budget unit at the source;**

**4. The following certification by the CO<sub>2</sub> authorized account representative: "I certify that I was selected as the CO<sub>2</sub> authorized account representative by an agreement binding on the owners and operators of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO<sub>2</sub> Budget Trading Program on behalf of the owners and operators of the CO<sub>2</sub> budget source and of each CO<sub>2</sub> 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 Department or a court of competent jurisdiction regarding the source or unit."; and**

**5. The signature of the CO<sub>2</sub> authorized account representative and any alternate CO<sub>2</sub> authorized account representative, and the dates signed.**

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**(b) Unless otherwise required by the Department, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department. The Department will not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.**

**7:27C-2.5 Objections concerning the CO<sub>2</sub> authorized account representative**

**(a) Once the Department has received a complete account certificate of representation under N.J.A.C. 7:27C-2.4, the Department will rely on the account certificate of representation, unless and until the Department receives a superseding complete account certificate of representation under N.J.A.C. 7:27C-2.4.**

**(b) Except as provided in N.J.A.C. 7:27C-2.3(a), no objection or other communication submitted to the Department concerning the authorization, or any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative will affect any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative, or the finality of any decision or order by the Department under the CO<sub>2</sub> Budget Trading Program.**

**(c) The Department will not decide, or otherwise intervene in, any private legal dispute concerning the authorization of, or any representation, action, inaction, or submission by any CO<sub>2</sub> authorized account representative, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.**

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**7:27C-2.6 Delegation of authority to make electronic submissions and review information in the CO<sub>2</sub> allowance tracking system**

**(a) A CO<sub>2</sub> authorized account representative may delegate to one or more natural persons, his or her authority to make an electronic submission to the Department under this chapter.**

**This natural person is the “electronic submission agent.”**

**(b) To delegate authority to make an electronic submission to the Department, a CO<sub>2</sub> authorized account representative shall submit to the Department a notice of delegation, in a format prescribed by the Department, that includes the following:**

**1. The name, address, e-mail address, telephone number, and facsimile transmission number of the delegating CO<sub>2</sub> authorized account representative;**

**2. The name, address, e-mail address, telephone number, and facsimile transmission number of each electronic submission agent;**

**3. For each such electronic submission agent, a list of the types of electronic submissions under (a) above for which authority is delegated to him or her; and**

**4. The following certifications by the delegating CO<sub>2</sub> authorized account representative:**

**i. “I agree that any electronic submission to the Department that is by the natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO<sub>2</sub> authorized account representative and before a notice of delegation supersedes this notice of delegation under N.J.A.C. 7:27C-2.6(c), shall be deemed to be an electronic submission by me.”; and**

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**ii. “Until a notice of delegation supersedes this notice of delegation under**

**N.J.A.C. 7:27C-2.6(c), I agree to maintain an e-mail account and to notify the Department**

**immediately of any change in my e-mail address unless and until all delegation authority by me under N.J.A.C. 7:27C-2.6 is terminated.”**

**(c) A notice of delegation submitted pursuant to (b) above shall be effective, with regard to the delegating CO<sub>2</sub> authorized account representative identified in such notice, upon receipt of such notice by the Department and until receipt by the Department of a superseding notice of delegation by such CO<sub>2</sub> authorized account representative. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.**

**(d) An electronic submission covered by the certification under (b)4 above and made in accordance with a notice of delegation effective under (b) above shall be deemed to be an electronic submission by the CO<sub>2</sub> authorized account representative submitting such notice of delegation.**

**(e) A CO<sub>2</sub> authorized account representative, or his or her alternative, may delegate to one or more natural persons, his or her authority to review information in COATS under this chapter. This natural person is the “reviewer.”**

**(f) To delegate authority to review information in COATS in accordance with (e) above, the CO<sub>2</sub> authorized account representative shall submit to the Department a notice of delegation, in a format prescribed by the Department, that includes the following:**

**1. The name, address, e-mail address, telephone number, and facsimile transmission number of the delegating CO<sub>2</sub> authorized account representative;**

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**2. The name, address, e-mail address, telephone number, and facsimile transmission number of each reviewer;**

**3. For each such reviewer, a list of the type of information under (e) above for which authority is delegated to him or her; and**

**4. The following certification statements by such CO<sub>2</sub> authorized account representative:**

**i. "I agree that any information that is reviewed by a natural person identified in this notice of delegation and of a type listed for such information accessible by the reviewer in this notice of delegation and that is made when I am a CO<sub>2</sub> authorized account representative and before a notice of delegation supersedes this notice of delegation under (g) below, shall be deemed to be a review by me."; and**

**ii. "Until a notice of delegation supersedes this notice of delegation under (g) below, I agree to maintain an e-mail account and to notify the Department immediately of any change in my e-mail address unless and until all delegation authority by me under N.J.A.C. 7:27C-2.6 is terminated."**

**(g) A notice of delegation submitted under (f) above shall be effective, with regard to the CO<sub>2</sub> authorized account representative identified in such notice, upon receipt of such notice by the Department and until receipt by the Department of a superseding notice of delegation by such CO<sub>2</sub> authorized account representative. The superseding notice of delegation may replace any previously identified reviewer, add a new reviewer, or eliminate entirely any delegation of authority.**

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### **SUBCHAPTER 3. PERMITS**

#### **7:27C-3.1 General requirements for an operating permit incorporating CO<sub>2</sub> Budget**

##### **Trading Program requirements**

**(a) Each CO<sub>2</sub> budget source shall have an operating permit issued by the Department pursuant to N.J.A.C. 7:27-22.**

**(b) The operating permit for each CO<sub>2</sub> budget source shall contain all applicable CO<sub>2</sub> Budget Trading Program requirements, as set forth in N.J.A.C. 7:27C-3.3(a)3, 4, 5, and 6.**

#### **7:27C-3.2 Submission of an application for a new, renewed, or modified operating permit incorporating CO<sub>2</sub> Budget Trading Program requirements**

**For any CO<sub>2</sub> budget source, the CO<sub>2</sub> authorized account representative shall submit a complete application under N.J.A.C. 7:27-22.28, and in conformance with the requirements of this chapter, to incorporate the CO<sub>2</sub> budget trading program requirements covering such CO<sub>2</sub> budget source.**

#### **7:27C-3.3 Contents of an application for an operating permit incorporating CO<sub>2</sub> Budget Trading Program requirements**

**(a) A complete application for a new, renewed, or modified operating permit for a CO<sub>2</sub> budget source shall include the following concerning the CO<sub>2</sub> budget source for which the application is submitted, in a format prescribed by the Department:**

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- 1. Identification of the CO<sub>2</sub> budget source, including plant name and the ORIS or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable;**
- 2. Identification of each CO<sub>2</sub> budget unit at the CO<sub>2</sub> budget source;**
- 3. The general provisions at N.J.A.C. 7:27C-1.4;**
- 4. The compliance certification requirements at N.J.A.C. 7:27C-4.1;**
- 5. The compliance requirements at N.J.A.C. 7:27C-6.9; and**
- 6. The monitoring, recordkeeping, and reporting requirements at N.J.A.C. 7:27C-8.**

#### **SUBCHAPTER 4. COMPLIANCE CERTIFICATION**

##### **7:27C-4.1 Compliance certification report**

**(a) For each control period, including the initial control period, in which a CO<sub>2</sub> budget source is subject to the CO<sub>2</sub> requirements of N.J.A.C. 7:27C-1.4, the CO<sub>2</sub> authorized account representative shall submit a compliance certification report to the Department, in a format provided by the Department, by the March 1 following the relevant control period or initial control period. No compliance certification report is required during an interim control period.**

**(b) The CO<sub>2</sub> authorized account representative shall include in the compliance certification report under (a) above the following:**

- 1. Identification of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source;**
- 2. At the CO<sub>2</sub> authorized account representative's option, the serial numbers of the CO<sub>2</sub> allowances that are to be deducted from the CO<sub>2</sub> budget source's compliance account**

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**under N.J.A.C. 7:27C-6.9 for the control period, including the serial numbers of any CO<sub>2</sub> offset allowances that are to be deducted, subject to the limitations of N.J.A.C. 7:27C-6.9(a)3; and**

**3. The compliance certification under (c) below.**

**(c) The CO<sub>2</sub> authorized account representative shall certify in the compliance certification report whether the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO<sub>2</sub> Budget Trading Program, based on reasonable inquiry of those persons with primary responsibility for operating the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source in compliance with the CO<sub>2</sub> Budget Trading Program, including, more specifically:**

**1. Whether the CO<sub>2</sub> budget source was operated in compliance with the requirements of N.J.A.C. 7:27C-1.4;**

**2. Whether the monitoring plan applicable to each CO<sub>2</sub> budget unit at the CO<sub>2</sub> budget source has been maintained to reflect the actual operation and monitoring of the CO<sub>2</sub> budget unit, and contains all information necessary to attribute CO<sub>2</sub> emissions to the CO<sub>2</sub> budget unit, in accordance with N.J.A.C. 7:27C-8;**

**3. Whether all the CO<sub>2</sub> emissions from each CO<sub>2</sub> budget unit at the CO<sub>2</sub> budget source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with N.J.A.C. 7:27C-8. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;**

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**4. Whether there has been any change to the facts that form the basis for certification under N.J.A.C. 7:27C-8 of each monitor at each CO<sub>2</sub> budget unit at the CO<sub>2</sub> budget source, or for using an excepted monitoring method or alternative monitoring method approved under N.J.A.C. 7:27C-8, if any; and**

**5. If a change is required to be reported under (c)4 above, the specific nature of the change, the reason for the change, when the change occurred, and how the CO<sub>2</sub> budget unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.**

#### **7:27C-4.2 Department action on compliance certifications**

**(a) The Department may review and conduct independent audits of any compliance certification or any other submission under this chapter and make appropriate adjustments of the information in the compliance certification or other submission.**

**(b) The Department may deduct CO<sub>2</sub> allowances from, or transfer CO<sub>2</sub> allowances to, a CO<sub>2</sub> budget source's compliance account, as appropriate, based on the information in the compliance certification or other submission, as adjusted under (a) above.**

### **SUBCHAPTER 5. CO<sub>2</sub> ALLOWANCE ALLOCATIONS**

#### **7:27C-5.1 New Jersey CO<sub>2</sub> Budget Trading Program base budget**

**(a) The New Jersey CO<sub>2</sub> Budget Trading Program annual base budget for the allocation years 2020 and later is as follows:**

- 1. For the 2020 allocation year, 18,000,000 tons;**

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- 2. For the 2021 allocation year, 17,460,000 tons;**
- 3. For the 2022 allocation year, 16,920,000 tons;**
- 4. For the 2023 allocation year, 16,380,000 tons;**
- 5. For the 2024 allocation year, 15,840,000 tons;**
- 6. For the 2025 allocation year, 15,300,000 tons;**
- 7. For the 2026 allocation year, 14,760,000 tons;**
- 8. For the 2027 allocation year, 14,220,000 tons;**
- 9. For the 2028 allocation year, 13,680,000 tons;**
- 10. For the 2029 allocation year, 13,140,000 tons; and**
- 11. For the 2030 and each succeeding allocation year, 12,600,000 tons.**

#### **7:27C-5.2 CO<sub>2</sub> allowance allocations**

**(a) The Department will allocate CO<sub>2</sub> allowances representing 100 percent of the tons for each allocation year from the New Jersey CO<sub>2</sub> Budget Trading Program base budget set forth in N.J.A.C. 7:27C-5.1 to a consumer benefit account, less those allowances set aside each allocation year pursuant to (b) below.**

**(b) The Department will allocate CO<sub>2</sub> allowances to a fixed-price contract set-aside account for each allocation year from the New Jersey CO<sub>2</sub> Budget Trading Program base budget set forth in N.J.A.C. 7:27C-5.1 in an amount sufficient to provide allowances at a fixed price of \$2.00 per ton to all eligible facilities, as provided at N.J.A.C. 7:27C-5.5.**

**(c) The Department will allocate CO<sub>2</sub> allowances to a cogeneration set-aside account for each allocation year from the New Jersey CO<sub>2</sub> Budget Trading Program base budget set forth in**

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**N.J.A.C. 7:27C-5.1 in an amount sufficient to provide allowances equivalent to the projected compliance adjustment for a cogeneration unit, as provided at N.J.A.C. 7:27C-5.3.**

**(d) The Department will distribute allowances from the consumer benefit account in accordance with N.J.A.C. 7:27C-5.3, 5.4, 5.5, and 11.13(b).**

**(e) For allocation years 2021 through 2031, the New Jersey CO<sub>2</sub> Budget Trading Program adjusted budget will be the maximum number of allowances available for allocation in a given allocation year, except for CO<sub>2</sub> offset allowances and CCR allowances.**

**(f) The Department will allocate CCR allowances, separate from and in addition to the New Jersey CO<sub>2</sub> Budget Trading Program base budget set forth in N.J.A.C. 7:27C-5.1, to the New Jersey consumer benefit account, in order to contain the cost of CO<sub>2</sub> allowances. The Department will allocate CCR allowances in the following manner:**

**1. The Department will initially allocate CCR allowances for calendar year 2020 in an amount equal to 10 percent of the New Jersey CO<sub>2</sub> Trading Program base budget for 2020 set forth at N.J.A.C. 7:27C-5.1(a)1; and**

**2. On or before January 1, 2021, and on or before January 1 of each calendar year thereafter, the Department will allocate current vintage year CCR allowances equal to 10 percent of the New Jersey CO<sub>2</sub> Trading Program base budget for the calendar year and withdraw the number of CCR allowances that remain in the New Jersey consumer benefit account at the end of the prior calendar year.**

**(g) The Department will convert and transfer any CO<sub>2</sub> allowances that have been withheld from any auctions into the New Jersey ECR Account, in order to provide additional emissions**

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**reductions in the event of lower-than-anticipated emissions reduction costs. The Department will withhold ECR allowances in the following manner:**

**1. If the condition in N.J.A.C. 7:27C-9.1(d)1 is met at an auction, then the maximum number of ECR allowances that will be withheld from that auction will be equal to 10 percent of the New Jersey CO<sub>2</sub> Budget Trading Program base budget for that calendar year, minus the total quantity of ECR allowances that have been withheld from any prior auctions in that calendar year. Any ECR allowances withheld from an auction will be transferred into the New Jersey ECR Account; and**

**2. The Department will not withdraw any allowances that have been transferred into the New Jersey ECR account.**

**(h) On March 15, 2021, the Department will determine the third adjustment for banked allowances quantity for allocation years 2021 through 2025, through the application of the following formula:**

$$\text{TABA} = ((\text{TA} - \text{TAE})/5) \times \text{RS}\%$$

**where:**

**TABA = The third adjustment for banked allowances quantity in tons;**

**TA (third adjustment) = The total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, as reflected in COATS on March 15, 2021;**

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**TAE (third adjustment emissions) = The total quantity of 2018, 2019, and 2020**

**emissions from all CO<sub>2</sub> budget sources in all participating states, reported pursuant to the CO<sub>2</sub> Budget Trading Program as reflected in COATS on March 15, 2021; and**

**RS% = New Jersey's (TBD) budget divided by the (TBD) regional budget.**

**(i) On April 15, 2021, the Department will establish the New Jersey CO<sub>2</sub> Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:**

$$AB = BB - TABA$$

**Where:**

**AB = The New Jersey CO<sub>2</sub> Budget Trading Program adjusted budget;**

**BB = The New Jersey CO<sub>2</sub> Budget Trading Program base budget; and**

**TABA = The third adjustment for banked allowances quantity in tons.**

**(j) After making the determinations in (i) above, the Department will publish the CO<sub>2</sub> Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years.**

### **7:27C-5.3 Retirement of CO<sub>2</sub> allowances on behalf of cogeneration units**

**(a) The Department will adjust the compliance obligation of a CO<sub>2</sub> budget unit that is a qualified cogeneration unit pursuant to (b) below for which an application has been filed pursuant to (c) below.**

**(b) To qualify for an adjustment of its compliance obligation, a CO<sub>2</sub> budget unit must be a cogeneration unit for which the CO<sub>2</sub> authorized account representative has not accepted a fixed-price sale offer of CO<sub>2</sub> allowances from the Department pursuant to N.J.A.C. 7:27C-**

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**5.5(a) during the calendar year that corresponds to the allocation year for which the request for CO<sub>2</sub> allowances pursuant to this section is being made.**

**(c) The CO<sub>2</sub> authorized account representative seeking the compliance obligation adjustment for a cogeneration unit shall submit to the Department, by March 30 of the year following the allocation year for which the compliance obligation adjustment is being requested, an application that includes the following:**

- 1. Documentation that the CO<sub>2</sub> budget unit is a cogeneration unit;**
- 2. Identification of the compliance account for the CO<sub>2</sub> budget unit;**
- 3. Identification of the allocation year for which an adjustment request is being made;**
- 4. Specification of the amount of the adjustment being requested, as determined**

**pursuant to (d) below; and**

**5. The calculations and supporting data used to determine the adjustment being requested and an explanation of the data and the methods on which the calculations are based.**

**(d) The Department will determine the adjustment for a CO<sub>2</sub> budget unit that is a cogeneration unit that meets the applicable requirements at (b) and (c) above based on the CO<sub>2</sub> emissions for the CO<sub>2</sub> budget unit during the allocation year for which an adjustment request is being submitted. The Department will adjust the compliance obligation by reducing the total CO<sub>2</sub> emissions by an amount equal to the CO<sub>2</sub> that is emitted as result of providing useful thermal energy or electricity supplied directly to the co-located facility during the allocation year. The compliance obligation will include CO<sub>2</sub> emissions associated with the production of electricity that is supplied to a regional electric grid, including, but not**

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**limited to, PJM and NYISO transmission and related distribution systems and the cogeneration unit will be responsible for securing CO<sub>2</sub> allowances for those emissions.**

**(e) The Department will allocate CO<sub>2</sub> allowances in an amount equivalent to the compliance adjustment determined pursuant to (d) above to the cogeneration set-aside account.**

**(f) At the end of each control period or initial control period, the Department will retire allowances from the cogeneration set-aside account in an amount equivalent to the emissions deducted from one or more compliance obligations pursuant to (d) above. The Department will transfer any remaining allowances to the consumer benefit account to be available for auction.**

#### **7:27C-5.4 Distribution of CO<sub>2</sub> allowances in the consumer benefit account**

**(a) The Department will make all CO<sub>2</sub> allowances for an allocation year that are held in the consumer benefit account for that allocation year available for purchase or auction by no later than the December 31 of the calendar year that corresponds to that allocation year.**

**(b) Except for those CO<sub>2</sub> allowances available for direct sale pursuant to N.J.A.C. 7:27C-5.5 to a CO<sub>2</sub> authorized account representative for a certified dispatch agreement facility, the Department will make all CO<sub>2</sub> allowances for a respective allocation year that are held in the consumer benefit account available for sale through an auction administered by the Department or on its behalf, pursuant to N.J.A.C. 7:27C-11.**

**(c) The Department may retire undistributed or unsold CO<sub>2</sub> allowances at the end of each control period, including the initial control period, including allowances representing**

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**adjustments to the compliance obligations of cogeneration facilities as provided at N.J.A.C.**

**7:27C-5.3.**

**7:27C-5.5 Fixed-price sale of CO<sub>2</sub> allowances to a certified dispatch agreement facility**

**(a) On an annual basis, the Department will make CO<sub>2</sub> allowances available for direct sale to the CO<sub>2</sub> authorized account representative of a certified dispatch agreement facility through a fixed-price sale offer, as follows:**

**1. The Department will apportion CO<sub>2</sub> allowances available annually for direct sale to each certified dispatch agreement facility based on the average annual CO<sub>2</sub> emissions for the certified dispatch agreement facility, as determined by the Department, for the most recent three-year period for which complete CO<sub>2</sub> emissions data are available. The Department will use emissions data as reported pursuant to N.J.A.C. 7:27C-8, if available, and as supplemented by such other data as necessary, in making such a determination;**

**2. The Department will allocate CO<sub>2</sub> allowances in the amount determined pursuant to (a)1 above to the fixed-price contract set-aside account;**

**3. The Department will offer CO<sub>2</sub> allowances made available for sale through a fixed-price sale offer for a price of \$2.00 per CO<sub>2</sub> allowance;**

**4. The Department will publish notice of the procedures for purchasing CO<sub>2</sub> allowances through a fixed-price sale offer at least 45 days prior to the fixed-price sale offer.**

**The public notice will include the following:**

**i. The number of CO<sub>2</sub> allowances available for purchase by a CO<sub>2</sub> authorized account representative on behalf of each certified dispatch agreement facility; and**

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**ii. The procedures for purchasing CO<sub>2</sub> allowances through the fixed-price sale offer, including the date by which a purchase option shall be exercised by a CO<sub>2</sub> authorized account representative on behalf of a certified dispatch agreement facility, and the procedures for exercising a purchase option;**

**5. The CO<sub>2</sub> authorized account representative for a certified dispatch agreement facility shall notify the Department by the deadline specified in the Department's notice of a fixed-price sale offer issued pursuant to (a)4 above as to whether the CO<sub>2</sub> authorized account representative accepts the Department's sale offer of CO<sub>2</sub> allowances for a specified CO<sub>2</sub> budget source. The CO<sub>2</sub> authorized account representative shall specify the number of CO<sub>2</sub> allowances he or she intends to purchase on behalf of each CO<sub>2</sub> budget source, up to the number specified by the Department in the notice, as specified pursuant to (a)4 above for the applicable CO<sub>2</sub> budget source; and**

**6. For those CO<sub>2</sub> allowances purchased by a CO<sub>2</sub> authorized account representative on behalf of a CO<sub>2</sub> budget source, the Department will allocate allowances to the compliance account of the CO<sub>2</sub> budget source.**

**(b) For a CO<sub>2</sub> budget source to be eligible to receive a fixed-price sale offer from the Department pursuant to (a) above, the owner or operator of the CO<sub>2</sub> budget source shall certify to the Department, consistent with the certification requirements at N.J.S.A. 26:2C-49, through an affidavit and supporting documentation from an independent entity, signed by both an official representative of the independent entity and by the chief financial officer or equivalent of the owner or operator of the CO<sub>2</sub> budget source, that the CO<sub>2</sub> budget source meets the criteria for a dispatch agreement facility as follows:**

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**1. The CO<sub>2</sub> budget source is, or includes, a cogeneration unit or the CO<sub>2</sub> budget source has a heat rate of less than 8,100 Btu per kilowatt-hour electric; and**

**2. The CO<sub>2</sub> budget source is subject to a power purchase agreement that includes the following conditions:**

**i. The agreement was executed prior to January 1, 2002;**

**ii. The agreement is for a duration of more than 15 years from its effective date;**

**iii. The agreement provides that the counterpart to the agreement that purchases energy from the facility controls the electric dispatch of the facility;**

**iv. The agreement does not allow for the facility to pass the cost of CO<sub>2</sub> allowances on to the counterpart to the agreement that purchases energy from the facility; and**

**v. The agreement is currently in effect.**

**(c) Upon the request of the Department, the owner or operator of a certified dispatch agreement facility shall provide on-site access to any information the Department requires to determine the validity of the certification provided pursuant to (b) above.**

**(d) If, subsequent to the submittal of an affidavit and supporting documentation pursuant to (b) above, there is any material change to the information and statements contained in the affidavit and supporting material, the persons who submitted the affidavit and supporting material shall submit a supplemental affidavit and supporting material addressing any such material change within 30 days after the change occurs. If the supplemental affidavit and**

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**supporting material is not timely submitted to the Department, the CO<sub>2</sub> budget source will not be eligible to receive a fixed-price sale offer.**

**(e) A facility will no longer be considered a certified dispatch agreement facility once the power purchase agreement documented pursuant to (b)2 above for that certified dispatch agreement facility expires or is terminated, or when the power dispatch services under a new contract become effective.**

**(f) A signatory to an affidavit submitted pursuant to (b) above who knowingly gives or causes to be given any false or misleading information or who knowingly makes any false or misleading statement in such affidavit shall be subject to the penalties and financial assessments outlined at N.J.S.A. 26:2C-49.e, and the CO<sub>2</sub> budget unit referenced in the affidavit shall no longer be considered a certified dispatch agreement facility.**

**(g) Any CO<sub>2</sub> allowances purchased at a fixed-price sale offer that remain in the compliance account of a certified dispatch agreement facility after the Department has made the compliance deduction for a control period or initial control period pursuant to N.J.A.C. 7:27C-6.9(b) will be assigned by the Department to the consumer benefit account established pursuant to N.J.A.C. 7:27C-5.2(a).**

## **SUBCHAPTER 6. CO<sub>2</sub> ALLOWANCE TRACKING SYSTEM (COATS)**

### **7:27C-6.1 CO<sub>2</sub> allowance tracking system (COATS) accounts**

**(a) Consistent with N.J.A.C. 7:27C-6.2(a), the Department will establish one compliance account for each CO<sub>2</sub> budget source. Allocations of CO<sub>2</sub> allowances pursuant to N.J.A.C. 7:27C-5 and 11 and deductions or transfers of CO<sub>2</sub> allowances pursuant to N.J.A.C. 7:27C-**

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**4.2, 6.9, or 7 will be recorded in the compliance accounts in accordance with this subchapter.**

**(b) Consistent with N.J.A.C. 7:27C-6.2(b), the Department will establish, upon request, a general account for any person. Transfers of CO<sub>2</sub> allowances pursuant to N.J.A.C. 7:27C-7 will be recorded in the general account in accordance with this subchapter.**

#### **7:27C-6.2 Establishment of a COATS account**

**(a) Upon receipt of a complete account certificate of representation under N.J.A.C. 7:27C-2.4, the Department will establish a compliance account for each CO<sub>2</sub> budget source for which the account certificate of representation was submitted and will assign a unique identifying number to each such established account.**

**(b) Upon receipt of a complete application for a general account under N.J.A.C. 7:27C-6.3(b), the Department will establish a general account for the person or persons for whom the application is submitted and will assign a unique identifying number to each such established account.**

**(c) Once the Department has established a COATS account, all submissions to the Department pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CO<sub>2</sub> allowances in the account, shall be made only by the CO<sub>2</sub> authorized account representative.**

#### **7:27C-6.3 Procedures for opening a general account**

**(a) Any person may apply to open a general account for the purpose of holding and**

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**transferring CO<sub>2</sub> allowances by submitting an application for a general account pursuant to (b) below.**

**(b) A complete application for a general account shall be submitted to the Department and include the following in a format prescribed by the Department:**

- 1. The name, address, e-mail address, telephone number, and facsimile transmission number of the CO<sub>2</sub> authorized account representative;**
- 2. At the option of the CO<sub>2</sub> authorized account representative, the organization name and type of organization;**
- 3. A list of all persons subject to a binding agreement for the CO<sub>2</sub> authorized account representative to represent their ownership interest with respect to the CO<sub>2</sub> allowances held in the general account;**
- 4. The following certification by the CO<sub>2</sub> authorized account representative and any alternate CO<sub>2</sub> authorized account representative: "I certify that I was selected as the CO<sub>2</sub> authorized account representative (or the alternate CO<sub>2</sub> authorized account representative, as applicable) by an agreement that is binding on all persons who have an ownership interest with respect to CO<sub>2</sub> allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO<sub>2</sub> Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Department or a court of competent jurisdiction regarding the general account.";**
- 5. The signature of the CO<sub>2</sub> authorized account representative and any alternate**

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**CO<sub>2</sub> authorized account representative and the dates signed; and**

**6. Documents of agreement referred to in the application for a general account, as may be required by the Department.**

**(c) The Department is under no obligation to review or evaluate the sufficiency of any documents of agreement referred to in the application for a general account.**

**(d) An application for a general account shall designate one and only one CO<sub>2</sub> authorized account representative and one and only one alternate CO<sub>2</sub> authorized account representative who may act on behalf of the CO<sub>2</sub> authorized account representative. The agreement by which the alternate CO<sub>2</sub> authorized account representative is selected shall include a procedure for authorizing the alternate CO<sub>2</sub> authorized account representative to act in lieu of the CO<sub>2</sub> authorized account representative.**

**7:27C-6.4 Authorization of the CO<sub>2</sub> authorized account representative for a general account**

**(a) The CO<sub>2</sub> authorized account representative shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO<sub>2</sub> allowances held in the general account in all matters pertaining to the CO<sub>2</sub> Budget Trading Program, notwithstanding any agreement between the CO<sub>2</sub> authorized account representative and such person. Each such person who has such ownership interest with respect to CO<sub>2</sub> allowances shall be bound by any order or decision issued to the CO<sub>2</sub> authorized account representative by the Department or a court of competent jurisdiction regarding the general account.**

**(b) Any representation, action, inaction, or submission by any alternate CO<sub>2</sub> authorized**

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**account representative shall be deemed to be a representation, action, inaction, or submission by the CO<sub>2</sub> authorized account representative.**

**(c) Each submission concerning the general account shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative. Each such submission shall include the following certification by the CO<sub>2</sub> authorized account representative:**

**“I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO<sub>2</sub> allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”**

**(d) The Department will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with (c) above.**

**7:27C-6.5 Changing the CO<sub>2</sub> authorized account representative and his or her alternate for a general account; changes in ownership interest**

**(a) The CO<sub>2</sub> authorized account representative or his or her alternate may be changed at any time by submitting a superseding complete application for a general account pursuant to N.J.A.C. 7:27C-6.3(b). The change in the CO<sub>2</sub> authorized account representative or his or her**

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**alternate is effective upon receipt by the Department of the superseding complete application for a general account. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative or the previous alternate CO<sub>2</sub> authorized account representative prior to the time and date when the Department receives the superseding application for a general account shall be binding on the new CO<sub>2</sub> authorized account representative and the new alternate CO<sub>2</sub> authorized account representative and the persons with an ownership interest with respect to the CO<sub>2</sub> allowances in the general account.**

**(b) In the event a person with an ownership interest in CO<sub>2</sub> allowances in a general account is not included on the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO<sub>2</sub> authorized account representative and his or her alternate, and the decisions, orders, actions, and inactions of the Department, as if the person were included on the list.**

**(c) Within 30 days following any change in the persons having an ownership interest with respect to CO<sub>2</sub> allowances in the general account, including the addition of persons, the CO<sub>2</sub> authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO<sub>2</sub> allowances in the general account to reflect the change.**

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**7:27C-6.6      Objections concerning the CO<sub>2</sub> authorized account representative for a general account**

**(a) Once the Department has received a complete application for a general account under N.J.A.C. 7:27C-6.3(b), the Department will rely on the application, unless and until the Department receives a superseding complete application for a general account under N.J.A.C. 7:27C-6.5(a).**

**(b) Except as provided at N.J.A.C. 7:27C-6.5(a) or (b), no objection or other communication submitted to the Department concerning the authorization, or any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative will affect any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or the finality of any decision or order by the Department under this chapter.**

**(c) The Department will not decide, or otherwise intervene in, any private legal dispute concerning the authorization or any representation, action, inaction, or submission of a CO<sub>2</sub> authorized account representative, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.**

**7:27C-6.7      Delegation of authority to make electronic submissions by the CO<sub>2</sub> authorized account representative for a general account**

**(a) A CO<sub>2</sub> authorized account representative may delegate to one or more natural persons his or her authority to make an electronic submission to the Department under N.J.A.C. 7:27C-7.1 as provided at (b) below.**

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**(b) In order to delegate authority to make an electronic submission to the Department in accordance with (a) above, the CO<sub>2</sub> authorized account representative shall submit to the Department a notice of delegation, in a format prescribed by the Department, that includes the following:**

**1. The name, address, e-mail address, telephone number, and facsimile transmission number of such CO<sub>2</sub> authorized account representative;**

**2. The name, address, e-mail address, telephone number, and facsimile transmission number of each natural person to whom the authority to make an electronic submission is delegated, herein referred to as “electronic submission agent”;**

**3. For each such electronic submission agent, a list of the types of electronic submissions under (a) above for which authority is delegated to him or her; and**

**4. The following certification by the delegating CO<sub>2</sub> authorized account representative:**

**i. “I agree that any electronic submission to the Department that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO<sub>2</sub> authorized account representative and before this notice of delegation is superseded by another notice of delegation under N.J.A.C. 7:27C-6.7(b) shall be deemed to be an electronic submission by me.”; and**

**ii. “Until this notice of delegation is superseded by another notice of delegation under N.J.A.C. 7:27C-6.7(b), I agree to maintain an e-mail account and to notify the**

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**Department immediately of any change in my e-mail address unless all delegation authority by me under N.J.A.C. 7:27C-6.7(b) is terminated.”**

**(c) A notice of delegation submitted under (b) above shall be effective, with regard to the delegating CO<sub>2</sub> authorized account representative identified in such notice, upon receipt of such notice by the Department and until the Department has received a superseding notice of delegation by such CO<sub>2</sub> authorized account representative. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.**

**(d) An electronic submission covered by the certification in (b)4 above and made in accordance with a notice of delegation effective under (b) above shall be deemed to be an electronic submission by the CO<sub>2</sub> authorized account representative submitting such notice of delegation.**

#### **7:27C-6.8 Recording of CO<sub>2</sub> allowance allocations and awards**

**(a) By January 1 of each calendar year, the Department will record the CO<sub>2</sub> allowances allocated for the consumer benefit account, pursuant to N.J.A.C. 7:27C-5.2(a).**

**(b) Each year, the Department will record CO<sub>2</sub> allowances allocated under N.J.A.C. 7:27C-5.5(a) in a fixed-price contract set-aside account and a cogeneration set-aside account for the year after the last year for which CO<sub>2</sub> allowances were previously allocated to that allocation set-aside account.**

**(c) When allocating and recording CO<sub>2</sub> allowances in an account pursuant to (a) and (b) above, the Department will assign each CO<sub>2</sub> allowance a unique identification number,**

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**otherwise referred to as a serial number, that will include digits identifying the year for which the CO<sub>2</sub> allowance is allocated.**

**(d) When awarding CO<sub>2</sub> offset allowances and recording them in an account pursuant to (f) below, the Department will assign each CO<sub>2</sub> allowance a unique identification number, otherwise referred to as a serial number, that will include digits identifying the year for which the CO<sub>2</sub> allowance is allocated and will identify the CO<sub>2</sub> allowance as a CO<sub>2</sub> offset allowance.**

**(e) The Department will record any CO<sub>2</sub> allowances awarded to a winning bidder in a CO<sub>2</sub> allowance auction pursuant to N.J.A.C. 7:27C-11.13 in the compliance account or general account identified by such winning bidder within five business days of such award by the Department.**

**(f) The Department will record any CO<sub>2</sub> allowances awarded to a project sponsor pursuant to N.J.A.C. 7:27C-10.9(a) or (b) in the project sponsor's general account within five business days of such award by the Department.**

#### **7:27C-6.9 Compliance**

**(a) CO<sub>2</sub> allowances are available to be deducted in order for a CO<sub>2</sub> budget source to comply with the CO<sub>2</sub> requirements of N.J.A.C. 7:27C-1.4 for a control period, provided that:**

**1. The CO<sub>2</sub> allowances, other than CO<sub>2</sub> offset allowances, are of allocation years that fall within a prior control period or the same control period for which the allowances will be deducted;**

**2. The CO<sub>2</sub> allowances are held in the CO<sub>2</sub> budget source's compliance account as of the CO<sub>2</sub> allowance transfer deadline for that control period, the initial control period, or the**

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**interim control period or are transferred into the compliance account by a CO<sub>2</sub> allowance**

**transfer correctly submitted for recording under N.J.A.C. 7:27C-7.1 by the CO<sub>2</sub> allowance**

**transfer deadline for that control period, the initial control period or interim control period;**

**3. For CO<sub>2</sub> offset allowances, the number of CO<sub>2</sub> offset allowances that are available to be deducted in order for a CO<sub>2</sub> budget source to comply with the CO<sub>2</sub> requirements of N.J.A.C. 7:27C-1.4 for a control period, the initial control period or an interim control period may not exceed the number of allowances required to account for 3.3 percent of the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for that control period or the initial control period, or 1.65 percent of the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for an interim control period, as determined in accordance with this subchapter and N.J.A.C. 7:27C-8; and**

**4. The CO<sub>2</sub> allowances are not necessary for deductions for excess emissions for a prior control period under (e) below.**

**(b) Following the recording, in accordance with N.J.A.C. 7:27C-7.2, of CO<sub>2</sub> allowance transfers submitted for recording in the CO<sub>2</sub> budget source's compliance account by the CO<sub>2</sub> allowance transfer deadline for a control period, the initial control period, or an interim control period, the Department will deduct CO<sub>2</sub> allowances available under (a) above to cover the source's CO<sub>2</sub> emissions for the control period, the initial control period, or the interim control period, as follows:**

**1. Until the number of CO<sub>2</sub> allowances deducted equals the number of tons of total CO<sub>2</sub> emissions, (or 0.50 times the number of tons of total CO<sub>2</sub> emissions for an interim control period), less any CO<sub>2</sub> emissions attributable to the burning of eligible biomass, and any CO<sub>2</sub> emissions eligible for deduction pursuant to N.J.A.C. 7:27C-5.3, determined in accordance**

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with N.J.A.C. 7:27C-8, from all CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source for the control period, the initial control period, or the interim control period; or

2. If there are insufficient CO<sub>2</sub> allowances to complete the deductions at (b)1 above, until there are no more CO<sub>2</sub> allowances remaining in the compliance account that are available to be deducted under (a) above.

(c) The CO<sub>2</sub> authorized account representative for a CO<sub>2</sub> budget source's compliance account may request the deduction of specific CO<sub>2</sub> allowances in the compliance account, identified by serial number, for emissions or excess emissions for a control period, the initial control period, or interim control period in accordance with (b) above or (e) below, as applicable. Such identification shall be made in the compliance certification report pursuant to N.J.A.C. 7:27C-4.1(b)2.

(d) Where there is no, or only partial, identification by the CO<sub>2</sub> authorized account representative, of available CO<sub>2</sub> allowances by serial number pursuant to N.J.A.C. 7:27C-4.1(b)2, the Department will deduct CO<sub>2</sub> allowances for a control period, initial control period, or interim control period from the CO<sub>2</sub> budget source's compliance account, in the following order:

1. CO<sub>2</sub> offset allowances, subject to the relevant compliance deduction limitations under (a)3 above, in chronological order (that is, CO<sub>2</sub> offset allowances from earlier allocation years shall be deducted before CO<sub>2</sub> offset allowances from later allocation years). In the event that some, but not all, CO<sub>2</sub> offset allowances from a particular allocation year are to be deducted, CO<sub>2</sub> offset allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances; and

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**2. Any CO<sub>2</sub> allowances, other than CO<sub>2</sub> offset allowances, that are available for deduction under (a) above. CO<sub>2</sub> allowances shall be deducted in chronological order (that is, CO<sub>2</sub> allowances from earlier allocation years shall be deducted before CO<sub>2</sub> allowances from later allocation years). In the event that some, but not all, CO<sub>2</sub> allowances from a particular allocation year are to be deducted, CO<sub>2</sub> allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.**

**(e) If, after the deduction of CO<sub>2</sub> allowances for compliance in accordance with (b) above, a CO<sub>2</sub> budget source has excess emissions, the Department will deduct from the CO<sub>2</sub> budget source's compliance account CO<sub>2</sub> allowances in an amount equal to three times the number of the CO<sub>2</sub> budget source's excess emissions. In the event that a CO<sub>2</sub> budget source has insufficient CO<sub>2</sub> allowances to cover three times the number of the CO<sub>2</sub> budget source's excess emissions, the CO<sub>2</sub> budget source shall immediately transfer CO<sub>2</sub> allowances into its compliance account in a quantity equal to three times the CO<sub>2</sub> budget source's excess emissions. No CO<sub>2</sub> offset allowances may be deducted to account for the source's excess emissions.**

**(f) The deduction of any CO<sub>2</sub> allowances required under (e) above will not affect the liability of the owners and operators of the CO<sub>2</sub> budget source or the CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable State law. The Department will apply the following guidelines in assessing fines, penalties, or other obligations:**

**1. For purposes of determining the number of days of violation, if a CO<sub>2</sub> budget source**

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**has excess emissions for a control period, the initial control period, or an interim control period, each day in the control period constitutes a day in violation, unless the owners and operators of the unit demonstrate that a lesser number of days should be considered;**

**2. Each ton of excess emissions is a separate violation;**

**3. For purposes of determining the number of days of violation, if a CO<sub>2</sub> budget source has excess emissions for an interim control period, each day in the interim control period constitutes a day in violation, unless the owners and operators of the unit demonstrate that a lesser number of days should be considered; and**

**4. Each ton of excess interim emissions is a separate violation.**

**(g) The Department's determination that a CO<sub>2</sub> budget source had excess emissions and the concomitant deduction of CO<sub>2</sub> allowances from that CO<sub>2</sub> budget source's account may be later challenged in the context of an adjudicatory hearing, as set forth at N.J.A.C. 7:27C-1.6, or in the context of or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement or civil or criminal judicial action arising from or encompassing that excess emissions violation will not prevent the Department from deducting the CO<sub>2</sub> allowances resulting from the Department's original determination that the relevant CO<sub>2</sub> budget source has had excess emissions. Should the Department's determination of the existence or extent of the CO<sub>2</sub> budget source's excess emissions be revised, either by a settlement or as the result of any administrative or judicial action, the Department will act as follows:**

**1. In any instance where the Department's determination of the extent of excess emissions was held to be too low, the Department will take further action under (e) and (f)**

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**above to address the expanded violation; and**

**2. In any instance where the Department's determination of the extent of excess emissions was held to be too high, the Department will distribute to the relevant CO<sub>2</sub> budget source CO<sub>2</sub> allowances in an amount equaling the number of CO<sub>2</sub> allowances deducted that are attributable to the difference between the original and final quantity of excess emissions. Should such CO<sub>2</sub> budget source's compliance account no longer exist, the CO<sub>2</sub> allowances will be provided to a general account selected by the owner or operator of the CO<sub>2</sub> budget source from which they were originally deducted.**

**(h) The Department will record in the appropriate compliance account, all deductions from such an account made pursuant to (b) and (e) above.**

**(i) The Department may review and conduct independent audits concerning any submission under the CO<sub>2</sub> Budget Trading Program and make appropriate adjustments of the information in the submissions.**

**(j) The Department may deduct CO<sub>2</sub> allowances from, or transfer CO<sub>2</sub> allowances to, a CO<sub>2</sub> budget source's compliance account based on information in the submissions, as adjusted under (i) above.**

#### **7:27C-6.10 Banking**

**Each CO<sub>2</sub> allowance that is held in a compliance account or a general account will remain in such account unless and until the CO<sub>2</sub> allowance is deducted or transferred under N.J.A.C. 7:27C-4.2, 6.9, 6.11, or 7.**

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**7:27C-6.11 Account error**

The Department may, at its sole discretion and on its own initiative, correct any error in any COATS account. Within 10 business days of making such correction, the Department will notify the CO<sub>2</sub> authorized account representative.

**7:27C-6.12 Closing of a general account**

(a) A CO<sub>2</sub> authorized account representative of a general account may instruct the Department to close the account by submitting a statement requesting deletion of the account from COATS and by correctly submitting for recording under N.J.A.C. 7:27C-7.1, a CO<sub>2</sub> allowance transfer of all CO<sub>2</sub> allowances in the account to one or more other COATS accounts.

(b) If a general account shows no activity for a period of one year or more and does not contain any CO<sub>2</sub> allowances, the Department may notify the CO<sub>2</sub> authorized account representative that the account will be closed in COATS 30 business days after the notice is sent. The Department will close the account after the 30-day period, unless before the end of the 30-day period the Department receives a correctly submitted transfer of CO<sub>2</sub> allowances into the account under N.J.A.C. 7:27C-7.1, or a statement submitted by the CO<sub>2</sub> authorized account representative demonstrating to the satisfaction of the Department good cause as to why the account should not be closed. The Department will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

**SUBCHAPTER 7. CO<sub>2</sub> ALLOWANCE TRANSFERS**

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**7:27C-7.1 Submission of CO<sub>2</sub> allowance transfers**

**(a) A CO<sub>2</sub> authorized account representative seeking recording of a CO<sub>2</sub> allowance transfer shall submit the transfer to the Department. The transfer shall include the following, in a format prescribed by the Department:**

- 1. The numbers identifying both the transferor and transferee accounts;**
- 2. A specification by serial number of each CO<sub>2</sub> allowance to be transferred;**
- 3. The printed name and signature of the CO<sub>2</sub> authorized account representative of the transferor account and the date signed;**
- 4. The date of the completion of the last sale or purchase transaction for the CO<sub>2</sub> allowance, if any; and**
- 5. The purchase or sale price of the CO<sub>2</sub> allowances that are the subject of a sale or purchase transaction under (a)4 above.**

**7:27C-7.2 Recording of CO<sub>2</sub> allowance transfer**

**(a) Within five business days of receiving a CO<sub>2</sub> allowance transfer, except as provided at (b) below, the Department will record a CO<sub>2</sub> allowance transfer by moving each CO<sub>2</sub> allowance from the transferor account to the transferee account as specified by the request, provided that:**

- 1. The transfer is submitted in accordance with N.J.A.C. 7:27C-7.1; and**
- 2. The transferor account includes each CO<sub>2</sub> allowance identified by serial number in the transfer.**

**(b) The Department will not record a CO<sub>2</sub> allowance transfer into or out of a compliance**

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**account that is submitted for recording after the CO<sub>2</sub> allowance transfer deadline that includes any CO<sub>2</sub> allowances of allocation years falling within a control period or interim control period prior to or the same as the control period or interim control period to which the CO<sub>2</sub> allowance transfer deadline applies until after completion of the process at N.J.A.C. 7:27C-6.9(b).**

**(c) The Department will not record a CO<sub>2</sub> allowance transfer submitted for recording that fails to meet the requirements of (a)1 and 2 above.**

#### **7:27C-7.3 Notification**

**(a) Within five business days of recording of a CO<sub>2</sub> allowance transfer under N.J.A.C. 7:27C-7.2, the Department will notify each party to the transfer by giving notice to the CO<sub>2</sub> authorized account representatives of both the transferor and transferee accounts.**

**(b) Within 10 business days of receipt of a CO<sub>2</sub> allowance transfer that fails to meet the requirements of N.J.A.C. 7:27C-7.2(a), the Department will notify the CO<sub>2</sub> authorized account representatives of both accounts subject to the transfer of a decision not to record the transfer and the reasons that the CO<sub>2</sub> allowances will not be recorded.**

**(c) Nothing in this section shall preclude the submission of a CO<sub>2</sub> allowance transfer for recording following notification under (b) above.**

### **SUBCHAPTER 8 MONITORING, RECORDKEEPING, AND REPORTING**

#### **7:27C-8.1 General requirements**

**(a) The owner, operator, and to the extent applicable, the CO<sub>2</sub> authorized account**

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**representative of a CO<sub>2</sub> budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subchapter and all applicable sections of 40 CFR Part 75 and all appendices thereto, as specified in this subchapter, which are incorporated by reference, as supplemented or amended. Where referenced in this subchapter, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO<sub>2</sub> mass emissions pursuant to this chapter. For purposes of complying with such requirements, the definitions in N.J.A.C. 7:27C-1.2 and 40 CFR 72.2, incorporated herein by reference, as supplemented and amended, apply, and the terms “affected unit” and “designated representative” in 40 CFR Part 75 are replaced by the terms “CO<sub>2</sub> budget unit” and “CO<sub>2</sub> authorized account representative,” respectively, as defined at N.J.A.C. 7:27C-1.2. For units not subject to an acid rain emissions limitation, the term “Administrator” in 40 CFR Part 75 is replaced with the term “Department.” Where the term “continuous emissions monitoring system” (or “CEMS”) is used in 40 CFR Part 75, the definition of that term at proposed N.J.A.C. 7:27C-1.2 applies, as it is tailored to apply to the CO<sub>2</sub> Budget Trading Program.**

**(b) The owner or operator of a CO<sub>2</sub> budget unit monitoring a non-CO<sub>2</sub> budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.16(b)(2)(ii)(B) or 40 CFR 75.72(b)(2)(ii), for purposes of complying with this subchapter shall monitor and report CO<sub>2</sub> mass emissions from such non-CO<sub>2</sub> budget unit according to the procedures for CO<sub>2</sub> budget units established in this section through N.J.A.C. 7:27C-8.7.**

**(c) The owner or operator of each CO<sub>2</sub> budget unit shall:**

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**1. Install all monitoring systems necessary to monitor CO<sub>2</sub> mass emissions in accordance with 40 CFR Part 75, except for equation G-1 of Appendix G, which shall not be used to determine CO<sub>2</sub> emissions under this chapter. Compliance with this paragraph may require systems to monitor CO<sub>2</sub> concentration, stack gas flow rate, O<sub>2</sub> concentration, heat input, and fuel flow rate;**

**2. Successfully complete all certification tests required under N.J.A.C. 7:27C-8.2 and meet all other requirements of this subchapter and 40 CFR Part 75 applicable to the monitoring systems installed pursuant to (c)1 above; and**

**3. Record, report, and quality-assure the data from the monitoring systems required pursuant to (c)1 above.**

**(d) The owner or operator of a CO<sub>2</sub> budget unit shall meet the monitoring system certification and other requirements of (c) above and shall record, report, and quality-assure the data from the monitoring systems under (c)1 above according to the following schedule:**

**1. For the owner or operator of a CO<sub>2</sub> budget unit that commences commercial operation before (six months before the effective date of this section), on and after (the operative date of this section);**

**2. For the owner or operator of a CO<sub>2</sub> budget unit that commences commercial operation on or after (six months before the effective date of this section), on and after the later of the following dates:**

**i. (Six months after the operative date of this section); or**

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**ii. The earlier of 90 unit-operating days after the date on which the unit commences commercial operation, or 180 calendar days after the date on which the unit commences commercial operation; and**

**3. For the owner or operator of a CO<sub>2</sub> budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under (d)1 or 2 above, by the earlier of:**

**i. Ninety unit-operating days after the date on which emissions first exit to the atmosphere through the new stack or flue; or**

**ii. One hundred eighty calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.**

**(e) Except as provided in (f) below, the owner or operator of a CO<sub>2</sub> budget unit that does not meet the applicable compliance date set forth in (d) above for any monitoring system under (c)1 above shall, for each such monitoring system, determine, record, and report maximum (or, as appropriate, minimum) potential values for CO<sub>2</sub> concentration, CO<sub>2</sub> emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO<sub>2</sub> mass emissions in accordance with 40 CFR 75.31(b)(2) or (c)(3) or 40 CFR Part 75 Appendix D section 2.4, as applicable.**

**(f) The owner or operator of a CO<sub>2</sub> budget unit that does not meet the applicable compliance date set forth in (d)3 above for any monitoring system under (c)1 above shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in 40 CFR Part 75, Subpart D, or Appendix D, in lieu of the maximum (or, as appropriate, minimum), potential values for a parameter, if the owner or operator**

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**demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under (d)3 above.**

**(g) A CO<sub>2</sub> budget unit that is subject to an acid rain emissions limitation or the requirements of the CSAPR NO<sub>x</sub> Annual Trading Program or the CSAPR NO<sub>x</sub> Ozone Season Trading Program and that qualifies for the optional SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> (for the Acid Rain Program) or NO<sub>x</sub> (for the CSAPR NO<sub>x</sub> Annual or Ozone Season Trading Program) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and reports emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this chapter.**

**(h) A CO<sub>2</sub> budget unit that is subject to an acid rain emissions limitation or the requirements of the CSAPR NO<sub>x</sub> Annual or Ozone Season Trading Programs that does not qualify for the optional SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> (for the Acid Rain Program) or NO<sub>x</sub> (for the CSAPR NO<sub>x</sub> Annual or Ozone Season Trading Programs) emissions calculations for LME units under 40 CFR 75.19, shall not use the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this chapter.**

**(i) A CO<sub>2</sub> budget unit that is not subject to an acid rain emissions limitation or the requirements of the CSAPR NO<sub>x</sub> Ozone Season Trading Program will qualify for the optional CO<sub>2</sub> emissions calculation for LME units under 40 CFR 75.19, provided that it emits less than 100 tons of NO<sub>x</sub> annually and no more than 25 tons of SO<sub>2</sub> annually.**

**(j) No owner or operator of a CO<sub>2</sub> budget unit shall:**

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**1. Use any alternative monitoring system, alternative reference method, or any other alternative for the required CEMS without having obtained prior written approval in accordance with N.J.A.C. 7:27C-8.6;**

**2. Operate the CO<sub>2</sub> budget unit, so as to discharge, or allow to be discharged, CO<sub>2</sub> emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subchapter and 40 CFR Part 75;**

**3. Disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO<sub>2</sub> 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 subchapter and 40 CFR Part 75; or**

**4. Retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emissions monitoring system under this subchapter, except under any of the following circumstances:**

**i. The owner or operator is monitoring emissions from the unit with another certified monitoring system that has been approved by the Department in accordance with the applicable provisions of this subchapter and 40 CFR Part 75 for use at that unit and that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or**

**ii. The CO<sub>2</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with N.J.A.C. 7:27C-8.2(h).**

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**(k) No person shall use, or cause to be used, any equipment or control apparatus, unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate issued under N.J.A.C. 7:27-8 and all conditions and provisions thereto.**

**(l) The owner or operator of a facility subject to N.J.A.C. 7:27-22 shall ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth in N.J.A.C. 7:27-17.9(a) or 22 Appendix, Table A, unless emission of the air contaminant is authorized by the operating permit.**

**(m) The owner or operator of a facility subject to N.J.A.C. 7:27-22 shall ensure that any source operation and any other activity covered by the operating permit issued under N.J.A.C. 7:27-22, and all components connected to, attached to, or serving the source operation are operated and maintained properly and according to the requirements of the operating permit.**

**(n) The owner or operator of a facility subject to N.J.A.C. 7:27-22 shall ensure that all requirements of the operating permit issued under N.J.A.C. 7:27-22 are met.**

#### **7:27C-8.2 Monitoring system certification procedures**

**(a) The owner or operator of a CO<sub>2</sub> budget unit is exempt from the initial certification, but not the recertification, requirements of this section for a monitoring system installed pursuant to N.J.A.C. 7:27C-8.1(c)1, if the monitoring system:**

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**1. Has been previously certified in accordance with 40 CFR Part 75; and**

**2. Meets the applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and Appendices B and D of 40 CFR Part 75.**

**(b) If the Administrator has previously approved a petition under 40 CFR 75.72(b)(2)(ii) or 40 CFR 75.16 (b)(2)(ii)(B) pursuant to 40 CFR 75.13 for apportioning the CO<sub>2</sub> emissions rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative requirement in 40 CFR Part 75, the CO<sub>2</sub> authorized account representative shall submit the petition to the Department pursuant to N.J.A.C. 7:27C-8.6(a) to determine whether the approval applies under this program.**

**(c) Except as provided in (a) above, the owner or operator of a CO<sub>2</sub> budget unit shall comply with the initial certification and recertification procedures set forth at (d) through (r) below for a CEMS and an excepted monitoring system under 40 CFR Part 75 Appendix D. The owner or operator of a CO<sub>2</sub> budget unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under 40 CFR Part 75 Subpart E shall comply with the initial certification and recertification procedures set forth below at (q) or (r), respectively.**

**(d) The owner or operator of a CO<sub>2</sub> budget unit shall ensure, for each CEMS required under N.J.A.C. 7:27C-8.1(c)1 (including the automated data acquisition and handling system) the successful completion of all of the initial certification testing required under 40 CFR 75.20 by the applicable deadlines specified in N.J.A.C. 7:27C-8.1(d). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this subchapter**

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**in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.**

**(e) The CO<sub>2</sub> authorized account representative shall submit a certification or recertification application to the Department within 45 days after completing all CO<sub>2</sub> monitoring system initial certification or recertification tests required under N.J.A.C. 7:27C-8.2, including the information required under 40 CFR 75.53(g) and (h) and 75.63.**

**(f) The owner or operator shall have a monitoring system recertified in accordance with 40 CFR 75.20(b) whenever the owner or operator of a CO<sub>2</sub> budget unit makes the following replacement, modification, or change:**

**1. A replacement, modification, or change to a certified CEMS under N.J.A.C. 7:27C-8.1(c)1 that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record CO<sub>2</sub> mass emissions or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or 40 CFR Part 75 Appendix B; or**

**2. For a system using stack measurements, such as stack flow, stack moisture content, CO<sub>2</sub> or O<sub>2</sub> monitors, a replacement, modification, or change to the flue gas handling system, or the unit's operation that the Administrator or the Department determines to significantly change the flow or concentration profile. Examples of changes that require recertification include replacement of the analyzer, change in the location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.**

**(g) Subsections (h) through (r) below apply to both initial certification and recertification of a monitoring system pursuant to N.J.A.C. 7:27C-8.1(c)1. For a recertification, replace the words "certification" and "initial certification" with the word "recertification"; replace the word**

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**“certified” with “recertified”; and proceed in the manner prescribed in 40 CFR 75.20(b)(5) and (g)(7) in lieu of (o) below.**

**(h) The CO<sub>2</sub> authorized account representative shall submit a written notice of the dates of certification to the Department, EPA Region 2 Office, and the Administrator in accordance with N.J.A.C. 7:27C-8.4.**

**(i) For each monitoring system, the CO<sub>2</sub> authorized account representative shall submit to the Department a certification application. The certification application must include the information specified in 40 CFR 75.53(g) and (h) and 75.63 to be complete.**

**(j) The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO<sub>2</sub> Budget Trading Program for a period not to exceed 120 days after the Department receives the complete certification application for the monitoring system, or component thereof, under (h) above. Data measured and recorded by the provisionally certified monitoring system, or component thereof, in accordance with the requirements of 40 CFR Part 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.**

**(k) 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 (i) above. In the event the Department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance**

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**requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO<sub>2</sub> Budget Trading Program.**

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

**(m) 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 CO<sub>2</sub> authorized account representative shall submit the additional information required to complete the certification application. If the CO<sub>2</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may disapprove the application and issue a notice of disapproval pursuant to this subsection. The 120-day review period specified at (k) above shall not begin before receipt of a complete certification application.**

**(n) If the certification application shows that any monitoring system, or component thereof, does not meet the performance requirements of 40 CFR Part 75, or if the certification application is incomplete and the Department disapproves the application pursuant to (m) above, then the Department will issue a written notice of disapproval of the certification application. The issuance of such notice of disapproval invalidates the provisional certification, 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 (p) below, for each monitoring system, or component thereof, that the Department has disapproved for initial certification.**

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**(o) The Department will conform with the requirements at N.J.A.C. 7:27C-8.3(b) in issuing a notice of disapproval of the certification status of a monitor.**

**(p) If the Department issues a notice of disapproval of a certification application under (n) above or a notice of disapproval of certification status under (o) above, then:**

**1. The owner or operator shall substitute the following values for each disapproved monitoring system, for each hour of unit 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) or 40 CFR 75.20(g)(7):**

**i. For a unit using or intending to monitor for CO<sub>2</sub> mass emissions using heat input, or for a unit using the low mass emissions excepted methodology under 40 CFR 75.19, incorporated herein by reference, as amended and supplemented, the maximum potential hourly heat input of the unit; or**

**ii. For a unit intending to monitor for CO<sub>2</sub> mass emissions using a CO<sub>2</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO<sub>2</sub> and the maximum potential flow rate of the unit under 40 CFR Part 75 Appendix A, section 2.1, incorporated herein by reference, as amended and supplemented;**

**2. The CO<sub>2</sub> authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with (h) and (i) 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 unit-operating days after the date of issuance of the notice of disapproval.**

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**(q) The owner or operator of a unit qualified to use the low mass emissions excepted methodology under N.J.A.C. 7:27C-8.1(g) shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2) and 40 CFR 75.20(h) and this section. If the owner or operator of such a unit elects to certify a fuel flow meter system for heat input determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).**

**(r) The CO<sub>2</sub> authorized account representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, by the Department, under Subpart E of 40 CFR Part 75, shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).**

### **7:27C-8.3 Out-of-control periods**

**(a) Whenever any monitoring system fails to meet the quality assurance and quality control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable procedures in 40 CFR Part 75 Subpart D or Appendix C.**

**(b) Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under N.J.A.C. 7:27C-8.2 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department or the Administrator will issue a notice of disapproval of the certification status of such monitoring system. The term “audit” refers to either a field audit**

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**or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department or Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system 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 for the monitoring system.**

#### **7:27C-8.4 Notifications**

**The CO<sub>2</sub> authorized account representative for a CO<sub>2</sub> budget unit shall submit to the Department and the Administrator, all written notice required by this subchapter in accordance with 40 CFR 75.61.**

#### **7:27C-8.5 Recordkeeping and reporting**

**(a) In addition to the requirements of N.J.A.C. 7:27C-2.1(f) and the recordkeeping and reporting requirements in this section, the CO<sub>2</sub> authorized account representative shall comply with all applicable recordkeeping and reporting requirements under 40 CFR 75.73.**

**(b) The owner or operator of a CO<sub>2</sub> budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.**

**(c) The CO<sub>2</sub> authorized account representative shall submit quarterly reports, as follows:**

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**1. The CO<sub>2</sub> authorized account representative shall report the CO<sub>2</sub> mass emissions data for the CO<sub>2</sub> budget unit, in an electronic format prescribed by the Administrator, unless otherwise prescribed by the Department, for each calendar quarter beginning with:**

**i. For a unit that commences commercial operation before (six months before the effective date of this section), the calendar quarter covering January 1, 2020 through March 31, 2020; or**

**ii. For a unit commencing commercial operation on or after (six months before the effective date of this section), the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under N.J.A.C. 7:27C-8.1(d). If the calendar quarter so determined is the third or fourth quarter of 2019, reporting shall commence in the quarter covering January 1, 2020 through March 31, 2020;**

**2. The CO<sub>2</sub> authorized account representative shall submit each quarterly report to the Department 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 Part 75 and 40 CFR 75.64. Quarterly reports shall be submitted for each CO<sub>2</sub> budget unit (or group of units using a common stack), and shall include all the data and information required in Subpart G of 40 CFR Part 75, except for opacity, heat input, NO<sub>x</sub> and SO<sub>2</sub> provisions; and**

**3. The CO<sub>2</sub> authorized account representative shall submit to the Department a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all the unit's emissions are**

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**correctly and fully monitored. In addition, the CO<sub>2</sub> authorized account representative shall certify:**

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

**ii. For a unit with add-on CO<sub>2</sub> emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75 Appendix B and the substitute values do not systematically underestimate CO<sub>2</sub> emissions; and**

**iii. The CO<sub>2</sub> concentration values substituted for missing data under 40 CFR Part 75 Subpart D do not systematically underestimate CO<sub>2</sub> emissions.**

#### **7:27C-8.6 Petitions**

**(a) Except as provided in (d) below, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this subchapter only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.**

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**(b) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is not subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66, and to the Department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this subchapter only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.**

**(c) In the event that the Administrator declines to review a petition under (b) above, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is not subject to an acid rain emissions limitation may submit a petition to the Department requesting approval to apply an alternative to any requirement of this subchapter. That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of this subchapter is in accordance with this subchapter only to the extent that the Department approves the petition in writing.**

**(d) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66, which is incorporated herein by reference, as amended and supplemented, and to the Department 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 CO<sub>2</sub> concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this subchapter only to the extent the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.**

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**7:27C-8.7 CO<sub>2</sub> budget units that co-fire eligible biomass**

**(a) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that co-fires eligible biomass as a compliance mechanism under this chapter shall report the following information to the Department for each calendar quarter:**

- 1. For each shipment of solid eligible biomass fuel fired at the CO<sub>2</sub> budget unit:**
  - i. The total eligible biomass fuel input, on an as-fired basis, in pounds;**

**and**

  - ii. The moisture content, on an as-fired basis, as a fraction by weight;**
- 2. For each distinct type of gaseous eligible biomass fuel fired at the CO<sub>2</sub> budget unit:**
  - i. The density of the biogas, on an as-fired basis, in pounds per standard cubic foot;**
  - ii. The moisture content of the biogas, on an as-fired basis, as a fraction by total weight; and**
  - iii. The total eligible biomass fuel input, in standard cubic feet;**
- 3. For each distinct type of eligible biomass fuel fired at the CO<sub>2</sub> budget unit:**
  - i. The dry basis carbon content of the fuel type, as a fraction by dry weight;**
  - ii. The dry basis higher heating value, in MMBtu per dry pound;**
  - iii. The total dry basis eligible biomass fuel input, in pounds, calculated in accordance with (b) below;**
  - iv. The total eligible biomass fuel heat input, in MMBtu, calculated in accordance with (d)<sup>1</sup> below; and**
  - v. A chemical analysis, including heating value and carbon content;**

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**4. The total amount of heat input to the CO<sub>2</sub> budget unit due to firing eligible biomass fuel, in MMBtu, calculated in accordance with (d)2 below;**

**5. A description and documentation of the monitoring technology employed, and a description and documentation of the fuel sampling methodology employed, including sampling frequency; and**

**6. The total amount of CO<sub>2</sub> emitted from the CO<sub>2</sub> budget unit due to firing eligible biomass fuel, in tons, calculated in accordance with (c) below.**

**(b) The owner or operator of a CO<sub>2</sub> budget unit shall calculate and submit to the Department on a quarterly basis the total dry weight for each distinct type of eligible biomass fired by the CO<sub>2</sub> budget unit during the reporting quarter. The total dry weight shall be determined for each fuel type as follows:**

**1. For solid fuel types:**

$$F_j = \sum_{i=1}^n (1 - M_i) \times F_i$$

**where:**

**F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j;**

**F<sub>i</sub> = Eligible biomass as-fired fuel input (lbs) for fired shipment i;**

**M<sub>i</sub> = Moisture content (fraction) for fired shipment i;**

**i = Fired fuel shipment;**

**j = Fuel type; and,**

**n = Number of shipments; and**

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**2. For gaseous fuel types:**

$$F_j = D_j \times V_j \times (1 - M_j)$$

**where:**

**F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j;**

**D<sub>j</sub> = Density of biogas (lbs/scf) for fuel type j;**

**V<sub>j</sub> = Total volume (scf) for fuel type j;**

**M<sub>j</sub> = Moisture content (fraction) for fuel type j; and**

**j = Fuel type.**

**(c) CO<sub>2</sub> emissions due to firing of eligible biomass shall be determined as follows:**

**1. For any full calendar quarter during which no fuel other than eligible biomass is combusted at the CO<sub>2</sub> budget unit, as measured and recorded in accordance with N.J.A.C. 7:27C-8.1 through 8.6; or**

**2. For any full calendar quarter during which fuels other than eligible biomass are combusted at the CO<sub>2</sub> budget unit, as determined using the following equation:**

$$\text{CO}_2 \text{ tons} = \sum_{j=1}^n F_j \times C_j \times O_j \times 44/12 \times 0.0005$$

**where:**

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**CO<sub>2</sub> tons = CO<sub>2</sub> emissions due to firing of eligible biomass for the reporting quarter;**

**F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated in (b) above;**

**C<sub>j</sub> = Carbon fraction (dry basis) for fuel type j;**

**O<sub>j</sub> = Oxidation factor for eligible biomass fuel type j, derived for solid fuels based on the ash content of the eligible biomass fired and the carbon content of this ash, as determined pursuant to (a)5 above; for gaseous eligible biomass fuels, a default oxidation factor of 0.995 may be used;**

**44/12 = The number of tons of carbon dioxide that are created when one ton of carbon is combusted;**

**0.0005 = The number of short tons that is equal to one pound;**

**j = Fuel type; and**

**n = Number of distinct fuel types.**

**(d) Heat input due to firing of eligible biomass for each quarter shall be determined as follows:**

**1. For each distinct fuel type:**

$$H_j = F_j \times HHV_j$$

**where:**

**H<sub>j</sub> = Heat input (MMBtu) for fuel type j;**

**F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated at (b) above;**

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**HHV<sub>j</sub> = Higher heating value (MMBtu/lb), dry basis, for fuel type j, as determined through chemical analysis pursuant to (a)5 above;**

**j = Fuel type; and**

**2. For all fuel types:**

**n**

**Heat Input MMBtu =  $\sum_{j=1}^n H_j$**

**j = 1**

**where:**

**H<sub>j</sub> = Heat input (MMBtu) for fuel type j;**

**j = Fuel type; and**

**n = Number of distinct fuel types.**

**(e) Fuel sampling methods and fuel sampling technology shall be consistent with the New York State Renewable Portfolio Standard Biomass Guidebook, September 2011, which is incorporated herein by reference, as amended and supplemented. A copy may be obtained from the New York State Energy Research and Development Authority's website at [www.nyserda.ny.gov](http://www.nyserda.ny.gov).**

**7:27C-8.8 Additional requirements to provide output data**

**(a) A CO<sub>2</sub> budget source shall report net electric output and net thermal output to the Department pursuant to (b) through (j) below.**

**(b) A CO<sub>2</sub> budget unit that participates in a wholesale electricity market administered by PJM or NYISO shall submit to the Department the same megawatt-hour value it is required to**

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**submit to PJM or NYISO to document megawatt-hours of electrical output and a statement certifying that the megawatt-hours of electrical output reported reflects the total actual electrical output for the CO<sub>2</sub> budget unit used by PJM or NYISO to determine settlement of transactions among wholesale electricity market participants.**

**(c) A CO<sub>2</sub> budget unit that does not participate in a wholesale electricity market administered by PJM or NYISO shall report net electrical output in accordance with an output monitoring plan approved by the Department pursuant to (g) below.**

**(d) A CO<sub>2</sub> budget unit that reports gross hourly MW to the Administrator shall use the same electronic data report (EDR) gross output, (in MW), as it submitted to the Administrator, for the hour times operating time in the hour, added for all hours in a year.**

**(e) A CO<sub>2</sub> budget unit that does not report gross hourly MW to the Administrator shall submit to the Department information in accordance with (g)<sup>1</sup> below.**

**(f) A CO<sub>2</sub> budget source that sells steam shall use billing meters to determine and report net steam output. A CO<sub>2</sub> budget source for which steam output is not measured by billing meters or for which steam output is combined with output from a non-CO<sub>2</sub> budget unit prior to measurement by the billing meter shall report net steam output in accordance with an output monitoring plan approved by the Department pursuant to (g) below. If data for steam output is not available, the CO<sub>2</sub> budget source shall report heat input providing useful steam output as a surrogate for steam output in accordance with an output monitoring plan approved by the Department pursuant to (e) below.**

**(g) Each CO<sub>2</sub> budget source shall submit to the Department for approval an output monitoring plan that includes a diagram and description as stated below:**

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**1. A diagram of the electrical and/or steam system, as applicable, for which output is being monitored, as follows:**

**i. For monitoring net electric output, the diagram must contain all CO<sub>2</sub> budget units and all electric generators served by each CO<sub>2</sub> budget unit and the relationship between CO<sub>2</sub> budget units and electric generators. If an electric generator served by a CO<sub>2</sub> budget unit is also served by a non-CO<sub>2</sub> budget unit, the non-CO<sub>2</sub> budget unit and its relationship to each electric generator shall be indicated on the diagram as well. The diagram shall indicate where the net electric output is measured and include all electrical inputs and outputs to and from the facility. If net electric output is determined using a billing meter, the diagram shall show each billing meter used to determine net sales of electricity and show that all electricity measured at the point of sale is generated by the CO<sub>2</sub> budget unit; or**

**ii. For monitoring net thermal output, the diagram must include all steam or hot water coming into the net steam system, including steam from CO<sub>2</sub> budget units and non-CO<sub>2</sub> budget units, and all exit points of steam or hot water from the net steam system. In addition, each input and output stream must have an estimated temperature, pressure, and phase indicator, and an enthalpy in Btu/lb. The diagram of the net steam system must identify all steam loads, including, but not limited to, useful loads, house loads, parasitic loads, and all boiler feedwater returns. The diagram must represent all energy losses in the system as either usable or unusable losses. The diagram must also indicate all flow meters, temperature or pressure sensors, or other equipment used to calculate gross thermal output. If a sales agreement is used to determine net thermal output, the diagram shall show the monitoring equipment used to determine the sales of steam;**

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**2. A description of each output monitoring system. The description of the output monitoring system must include a written description of the output system and the equations used to calculate output. For net thermal output systems, descriptions and justifications of each useful load must be included;**

**3. A detailed description of all quality assurance and quality control activities that will be performed to maintain the output system in accordance with this subsection; and**

**4. Documentation supporting any output value(s) to be used as a missing data value should there be periods of invalid output data. The missing data output value must be either zero or an output value that is likely to be lower than a measured value and that is approved as part of the monitoring plan required under this section.**

**(h) The CO<sub>2</sub> authorized account representative for the CO<sub>2</sub> budget source shall submit a certification, which may be submitted with the certification application required under N.J.A.C. 7:27C-8.2(e), stating that the output monitoring system either consists entirely of billing meters or meets one of the accuracy requirements for non-billing meters at (h)2 below. The certification shall state that the monitoring system meets the following requirements, as applicable:**

**1. The billing meter must record the electric or thermal output. Any electric or thermal output values that the CO<sub>2</sub> budget source reports must be the same as the values used in billing for the output. No additional certification or testing is required for any output measurement equipment that is used as a billing meter in commercial transactions; or**

**2. For a non-billing meter, the accuracy of the output monitoring system must either be within 10.0 percent of the reference value (a system approach to accuracy), or the**

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**accuracy of each component monitor for the output system must be within 3.0 percent of the full-scale value (a component approach to accuracy), whichever is less stringent, as follows:**

**i. The system approach to accuracy must include a determination of how the system accuracy of 10.0 percent is achieved using the individual components in the system and include data loggers and any watt meters used to calculate the final net electric output data and/or any flowmeters for steam or condensate, temperature measurement devices, absolute pressure measurement devices, and differential pressure devices used for measuring thermal energy; or**

**ii. If testing a piece of output measurement equipment pursuant to the component approach to accuracy shows that the output readings are not accurate to within 3.0 percent of the full-scale value, then the equipment shall be repaired or replaced to meet that requirement. Data shall remain invalid until the output measurement equipment passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test.**

**(i) Ongoing quality assurance and quality control (QA/QC) activities shall be performed to maintain the output system in accordance with the following:**

**1. Where billing meters are used to determine output, no QA/QC activities beyond what are already performed are required;**

**2. Where non-billing meters are used to determine output, certain types of equipment, such as potential transformers, current transformers, nozzle and venturi type meters, and the primary element of an orifice plate only require an initial certification of calibration and do not require periodic recalibration, unless the equipment is physically changed. However, the pressure and temperature transmitters accompanying an orifice plate**

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shall be periodically retested. For other types of equipment, recalibration or reverification of the meter accuracy shall be performed at least once every two years (that is, at least once every eight calendar quarters), unless a consensus standard, approved by the Department as part of an output monitoring plan at (g) above, allows for less frequent calibrations or accuracy tests. For non-billing meters, the output monitoring system must either meet an accuracy of within 10.0 percent of the reference value, or each component monitor for the output system must meet an accuracy of within 3.0 percent of the full-scale value, whichever is less stringent. If testing a piece of output measurement equipment shows that the output readings are not accurate to within 3.0 percent of the full-scale value, then the equipment shall be repaired or replaced to meet that requirement; and

3. If testing a piece of output measurement equipment shows that the output readings are not accurate to the certification value at (g)2 above, as applicable, data remain invalid until the output measurement equipment passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test. All invalid data shall be replaced by either zero or an output value that is likely to be lower than a measured value and that is approved as part of the output monitoring plan required under (g) above.

(j) The owner or operator of a CO<sub>2</sub> budget source shall retain data used to monitor, determine, or calculate net electrical output and net thermal output for 10 years.

(k) The CO<sub>2</sub> authorized account representative shall submit an annual output report, as follows:

1. Electronically, by the March 1 following the immediately preceding calendar year;
2. Upon request by the Department, in hardcopy;

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**3. Including unit level megawatt-hours and all useful steam output; and**

**4. Including a certification from the CO<sub>2</sub> authorized account representative stating the following:**

**“I am authorized to make this submission on behalf of the owners and operators of the CO<sub>2</sub> budget source or CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source 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.”**

**(l) The CO<sub>2</sub> authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of N.J.A.C. 7:27C-1.4(o) and 2.1(f).**

## **SUBCHAPTER 9. AUCTION OF CCR AND ECR ALLOWANCES**

### **7:27C-9.1 General requirements**

**(a) In addition to the information specified at N.J.A.C. 7:27C-11.5(c), the notice of CO<sub>2</sub> allowance auction for each auction will include the following:**

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- 1. The number of CO<sub>2</sub> allowances offered for sale at the auction, not including any CCR allowances;**
- 2. The number of CCR allowances that will be offered for sale at the auction if the condition at (b)1 below is met;**
- 3. The minimum reserve price for the auction;**
- 4. The CCR trigger price for the auction;**
- 5. The maximum number of CO<sub>2</sub> allowances that may be withheld from sale at the auction if the condition at (d)1 below is met; and**
- 6. The ECR trigger price for the auction.**

**(b) The following apply to the sale of CCR allowances:**

- 1. The Department will sell CCR allowances only at an auction in which the total demand for allowances, above the CCR trigger price, exceeds the number of CO<sub>2</sub> allowances available for purchase at the auction, not including any CCR allowances;**
- 2. If the condition at (b)1 above is met at an auction, then the number of CCR allowances the Department will offer for sale by at the auction will be equal to the number of CCR allowances in the New Jersey consumer benefit account at the time of the auction;**
- 3. After all the CCR allowances in the New Jersey consumer benefit account have been sold in a given calendar year, no additional CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition at (b)1 above is met at an auction;**

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**4. At an auction in which CCR allowances are sold, the reserve price for the auction will be the CCR trigger price; and**

**5. If the condition of (b)1 above is not satisfied, no CCR allowances will be offered for sale at the auction, and the reserve price for the auction will be equal to the minimum reserve price.**

**(c) The Department will implement the reserve price in the following manner:**

**1. No allowances will be sold at any auction for a price below the reserve price for that auction; and**

**2. If the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction will be the reserve price.**

**(d) The following apply to the withholding of ECR allowances from an auction:**

**1. The Department will withhold allowances from an auction only if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any such ECR allowances, as provided at N.J.A.C. 7:27C-5.2(e) above; and**

**2. If the condition in (d)1 above is met at an auction, then the maximum number of ECR allowances that may be withheld from that auction will be equal to the quantity shown in N.J.A.C. 7:27C-5.2(e)1 minus the total quantity of ECR allowances that have been withheld from any prior auction in that calendar year. The Department will transfer any ECR allowances withheld from an auction into the New Jersey ECR Account.**

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## **SUBCHAPTER 10. CO<sub>2</sub> EMISSIONS OFFSET PROJECTS**

### **7:27C-10.1 Purpose**

The Department will award CO<sub>2</sub> offset allowances to sponsors of CO<sub>2</sub> emissions offset projects that have reduced or avoided atmospheric loading of CO<sub>2</sub>, CO<sub>2</sub> equivalent, or sequestered carbon as demonstrated in accordance with the applicable provisions of this subchapter. The requirements of this subchapter are designed to ensure that CO<sub>2</sub> offset allowances awarded represent CO<sub>2</sub>-equivalent emission reductions, or carbon sequestration that are real, additional, verifiable, enforceable, and permanent within the framework of a standards-based approach. Subject to the relevant compliance deduction limitations at N.J.A.C. 7:27C-6.9(a)3, any CO<sub>2</sub> budget source may use CO<sub>2</sub> offset allowances for compliance purposes.

### **7:27C-10.2 Definitions related to CO<sub>2</sub> emissions offset projects**

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

“Accredited independent verifier” means an independent verifier who has been accredited by the Department pursuant to N.J.A.C. 7:27C-10.8 to conduct verification activities under this subchapter.

“Allocation period” means the number of years for which an offset project that has received a consistency determination pursuant to N.J.A.C. 7:27C-10.4(i) is qualified for the award of CO<sub>2</sub> offset allowances pursuant to N.J.A.C. 7:27C-10.9(a).

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**“Anaerobic digester” means a device that promotes the decomposition of organic material to simple organics and gaseous biogas products, in the absence of elemental oxygen, usually accomplished by means of controlling temperature and volume, and that includes a methane recovery system.**

**“Anaerobic digestion” means the decomposition of organic material, such as manure, brought about through the action of microorganisms in the absence of elemental oxygen.**

**“Anaerobic storage” means the storage of organic material in an oxygen-free environment, or under oxygen-free conditions, including, but not limited to, holding tanks, ponds, and lagoons.**

**“Animal unit” means a unit for measuring animal inventories, where one animal unit is equal to 1,400 pounds of animal live weight.**

**“ANSI” means the American National Standards Institute.**

**“Biogas” means gas resulting from the decomposition of organic matter under anaerobic conditions, the principal constituents of which are methane and carbon dioxide.**

**“Cancelled” or “retired” means the placement of a greenhouse gas allowance or credit in a retirement account controlled by the jurisdiction that generated the allowance or credit, or in an allowance retirement account controlled by the Department, or the determination by the Department that the greenhouse gas allowance or credit has otherwise been rendered unusable.**

**“Carbon pool” means a reservoir that has the ability to accumulate and store carbon.**

**“Carbon stock” means the quantity of carbon in a carbon pool.**

**“CO<sub>2</sub>e” means carbon dioxide equivalent.**

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**“Conflict of interest” means a situation that may arise with respect to an individual in relation to any specific project sponsor, CO<sub>2</sub> emissions offset project, or category of offset projects, such that the individual’s other activities or relationships with other persons or organizations render or may render the individual incapable of providing an impartial certification opinion, or otherwise compromise the individual’s objectivity in performing certification functions.**

**“Cooperating regulatory agency” means a regulatory agency in a state or United States jurisdiction, other than a participating state, that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states to carry out certain obligations relative to CO<sub>2</sub> emissions offset projects in that state or United States jurisdiction, including, but not limited to, the obligation to perform audits of offset project sites, and to report violations of this subchapter to the Department.**

**“Forest offset project” means an offset project involving reforestation, improved forest management, or avoided conversion.**

**“Forest offset project data report” means the report prepared by a project sponsor each year that provides the information and documentation required by this chapter or the forest offset protocol.**

**“Forest offset protocol” means the protocol titled “Regional Greenhouse Gas Initiative Offset Protocol U.S. Forest Projects,” published by the participating states on June 13, 2013, available on the RGGI website at [www.rggi.org/allowance-tracking/offsets](http://www.rggi.org/allowance-tracking/offsets), which is incorporated herein by reference.**

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**“Intentional reversal” means any reversal caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary.**

**“Market penetration rate” means a measure of the diffusion of a technology, product, or practice in a defined market, as represented by the percentage of annual sales for a product or practice, or as a percentage of the existing installed stock for a product or category of products, or as the percentage of existing installed stock that utilizes a practice. The Department may determine an appropriate market definition and market penetration metric for a category of technology, product, or practice, and may issue guidance specifying the technologies, products, or practices that meet a specified market penetration rate.**

**“Offset project” means all equipment, materials, items, or actions directly related to the reduction of CO<sub>2</sub> equivalent emissions or the sequestration of carbon specified in a consistency application submitted pursuant to N.J.A.C. 7:27C-10.4. Equipment, materials, items, or actions unrelated to an offset project reduction of CO<sub>2</sub> equivalent emissions or the sequestration of carbon, but occurring at a location where an offset project occurs, shall not be considered part of an offset project, except as set forth at N.J.A.C. 7:27C-10.5 through 10.9.**

**“Project commencement” means, for an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials, the date of the beginning of such activity. For an offset project that involves the implementation of a management activity or protocol, “project commencement” means the date on which such activity is first implemented or such protocol is first utilized. For a forest offset project**

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**“project commencement” means the date specified in section 3.2 of the forest offset protocol.**

**“Project sponsor” means the sponsor of an offset project under this chapter.**

**“Regional-type anaerobic digester” means an anaerobic digester that uses feedstock from more than one agricultural operation, or that imports feedstock from more than one agricultural operation. A regional-type anaerobic digester is also commonly referred to as a “community digester” or “centralized digester.”**

**“Reporting period” means the period of time covered by a forest offset project data report. The first reporting period for a forest offset project in an initial crediting period may consist of six to 24 consecutive months; all subsequent reporting periods in an initial crediting and all reporting periods in any renewed crediting period must consist of 12 consecutive months.**

**“Reversal” means a greenhouse gas emission reduction or greenhouse gas removal enhancement for which CO<sub>2</sub> offset allowances have been issued that is subsequently released or emitted back into the atmosphere due to any intentional or unintentional circumstance.**

**“System benefit fund” means any fund made up of revenue collected directly from retail electricity or natural gas ratepayers through retail energy bills.**

**“Total solids” means the total of all solids in a sample, including the total suspended solids, total dissolved solids, and volatile suspended solids.**

**“Transmission and/or distribution entity” means the assets and equipment used to transmit and distribute electricity from an electric generator to the electrical load of a customer. “Transmission and/or distribution entity” includes all related assets and**

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**equipment located within the service territory of the entity, defined as the service territory of a load-serving entity specified by the applicable state regulatory agency.**

**“Unintentional reversal” means any reversal, including, but not limited to, wildfires, insects, or disease, that is not the result of the forest owner’s negligence, gross negligence, or willful intent.**

**“Verification” means the confirmation by an accredited independent verifier that certain parts of a CO<sub>2</sub> emissions offset project consistency application and/or measurement, monitoring or verification report conform to the requirements of this subchapter.**

**“Volatile solids” means the portion of total solids that is comprised primarily of organic matter, as defined in U.S. EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020).**

### **7:27C-10.3 General requirements**

**(a) The following types of offset projects are eligible for the award of CO<sub>2</sub> offset allowances, provided they have otherwise satisfied all the applicable requirements of this subchapter:**

- 1. Landfill methane capture and destruction;**
- 2. Sequestration of carbon due to reforestation, improved forest management, or avoided conversion; and**
- 3. Avoided methane emissions from agricultural manure management operations.**

**(b) To qualify for the award of CO<sub>2</sub> offset allowances, an offset project must be located:**

- 1. In New Jersey;**

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**2. Partly in New Jersey and partly in one or more other participating states, provided that more of the CO<sub>2</sub>-equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in New Jersey than in any other participating state; or**

**3. In any state or United States jurisdiction with a cooperating regulatory agency.**

**(c) Any person meeting the requirements of N.J.A.C. 7:27C-10.4 may act as the project sponsor.**

**(d) Except as provided with respect to specific offset project standards at N.J.A.C. 7:27C-10.5, 10.6, and 10.7, the Department will not award CO<sub>2</sub> offset allowances to:**

**1. An offset project that is required pursuant to any local, state, or Federal law, rule, regulation, or administrative or judicial order. If an offset project has been issued a consistency determination under N.J.A.C. 7:27C-10.4 and is later required by local, state, or Federal law, rule, regulation, or administrative or judicial order, then the offset project will remain eligible for the award of CO<sub>2</sub> offset allowances until the end of its current allocation period, described at (e) and (f) below, but its eligibility will not be extended for an additional allocation period;**

**2. An offset project that includes an electric generation component, unless the project sponsor transfers legal rights to any and all attribute credits (other than the CO<sub>2</sub> offset allowances awarded under N.J.A.C. 7:27C-10.9) generated from the operation of the offset project that may be used for compliance with a renewable portfolio standard or other regulatory requirement, to the Department;**

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**3. An offset project that receives funding or other incentives from any system benefit fund, or funds, or other incentives provided through revenue from the auction or sale of CO<sub>2</sub> allowances in the consumer benefit account pursuant to N.J.A.C. 7:27C-5.4(a) or (b); and**

**4. An offset project that is awarded allowances or credits under any other mandatory or voluntary greenhouse gas program, except as described at N.J.A.C. 7:27C-10.6(p).**

**(e) Except as provided in (f) below, the Department may award CO<sub>2</sub> offset allowances under N.J.A.C. 7:27C-10.9 for an initial 10-year allocation period. At the end of the initial 10-year allocation period, the Department may award CO<sub>2</sub> offset allowances under N.J.A.C. 7:27C-10.9 for a second 10-year allocation period, provided the offset sponsor has submitted a consistency application pursuant to N.J.A.C. 7:27C-10.4 prior to the expiration of the initial allocation period, and the Department has issued a consistency determination pursuant to N.J.A.C. 7:27C-10.4(i).**

**(f) The Department may award CO<sub>2</sub> offset allowances under N.J.A.C. 7:27C-10.9 for any forest offset project for an initial 25-year allocation period. At the end of the initial 25-year allocation period or any subsequent 25-year allocation period, the Department may award CO<sub>2</sub> offset allowances under N.J.A.C. 7:27C-10.9 for a subsequent 25-year allocation period, provided the offset sponsor has submitted a consistency application for the offset project pursuant to N.J.A.C. 7:27C-10.4 prior to the expiration of the initial or subsequent allocation period, as appropriate, and the Department has issued a consistency determination pursuant to N.J.A.C. 7:27C-10.4(i).**

**(g) The Department will award CO<sub>2</sub> offset allowances under N.J.A.C. 7:27C-10.9 only for a forest offset project that is initially commenced on or after January 1, 2014, or, for an offset**

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**project other than a forest offset project, that is initially commenced on or after December 20, 2005.**

**(h) A project sponsor shall provide the Department, in writing, an access agreement granting the Department, or, as appropriate, the cooperating regulatory agency, access to the physical location of the offset project to inspect for compliance with this subchapter.**

**(i) If, at any time, the Department determines that a project sponsor has not complied with the requirements of this subchapter, the Department may revoke and retire any and all CO<sub>2</sub> offset allowances in the project sponsor's account. If, at any time, the Department determines that an offset project does not comply with the requirements of this subchapter, then the Department may revoke any approvals it has issued relative to the offset project.**

#### **7:27C-10.4 Consistency application process**

**(a) The project sponsor shall establish a general account under N.J.A.C. 7:27C-6.2(b).**

**(b) All submissions to the Department required for the award of CO<sub>2</sub> offset allowances under this subchapter shall be from the CO<sub>2</sub> authorized account representative for the general account of the relevant project sponsor.**

**(c) A consistency application for an offset project shall be submitted, in a format prescribed by the Department, and consistent with the requirements of this section, by the following deadlines:**

**1. For a forest offset project, by the date that is one year after the offset project is commenced, except as described in N.J.A.C. 7:27C-10.6(o); and**

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**2. For an offset project other than a forest offset project, by the date that is six months after the offset project is commenced.**

**(d) The Department will deny any consistency application that fails to meet the deadlines of (c) above.**

**(e) A consistency application for an offset project shall include:**

**1. The project sponsor's name, address, e-mail address, telephone number, facsimile transmission number, and account number;**

**2. The offset project description, as required by the relevant provisions of N.J.A.C. 7:27C-10.5, 10.6, and 10.7;**

**3. A demonstration that the offset project meets all applicable requirements of this subchapter or, in the case of an offset project located in a state or United States jurisdiction that is not a participating state, a demonstration that the offset project meets all applicable requirements of the cooperating regulatory agency in the state or United States jurisdiction where the offset project is located;**

**4. The emissions baseline determination as required by the relevant provisions of N.J.A.C. 7:27C-10.5, 10.6, and 10.7;**

**5. An explanation of how the projected reduction or avoidance of atmospheric loading of CO<sub>2</sub> or CO<sub>2</sub> equivalent or the sequestration of carbon is to be quantified, monitored, and verified as required by the relevant provisions of N.J.A.C. 7:27C-10.5, 10.6, and 10.7;**

**6. A completed consistency application agreement signed by the project sponsor that reads as follows: "I, the undersigned project sponsor (name) recognize and accept that the**

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**application for, and the receipt of, CO<sub>2</sub> offset allowances under the CO<sub>2</sub> Budget Trading**

**Program is predicated on the project sponsor following all the requirements of N.J.A.C. 7:27C-**

**10. I, the undersigned project sponsor, hereby certify that I hold the legal rights to the offset project or have been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO<sub>2</sub> offset allowances under N.J.A.C. 7:27C-10 is contingent on meeting the requirements of N.J.A.C. 7:27C-10. I authorize the Department to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in this application. I understand that this right to audit includes the right to enter the physical location of the offset project. With regard to any legal dispute under this subchapter, I submit to the jurisdiction of the State of New Jersey and all such disputes will be subject to applicable New Jersey law.”;**

**7. A statement and certification report signed by the project sponsor certifying that all offset projects for which the sponsor has received CO<sub>2</sub> offset allowances under this subchapter (or similar provisions in the rules of other participating states), under the sponsor’s ownership or control (or under the ownership or control of any entity that controls, is controlled by, or has common control with the sponsor) are in compliance with all applicable requirements of the CO<sub>2</sub> Budget Trading Program in all participating states;**

**8. A verification report and certification signed by an accredited independent verifier indicating that he or she has reviewed the entire application and evaluated the following in relation to the applicable requirements of this subchapter and any applicable guidance issued by the Department:**

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**i. The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable requirements of N.J.A.C. 7:27C-10.3, 10.5, 10.6, and 10.7;**

**ii. The adequacy and validity of information supplied by the project sponsor to demonstrate baseline emissions pursuant to the applicable requirements at N.J.A.C. 7:27C-10.5, 10.6, and 10.7;**

**iii. The adequacy of the monitoring and verification plan submitted pursuant to the applicable requirements at N.J.A.C. 7:27C-10.5, 10.6, and 10.7; and**

**iv. Such other evaluations and statements as the Department may require in order to fully review whether the offset project meets the applicable requirements of N.J.A.C. 7:27C-10; and**

**9. Disclosure of any voluntary or mandatory programs, other than the CO<sub>2</sub> Budget Trading Program, pursuant to which greenhouse gas emissions data related to the offset project has been or will be reported.**

**(f) The Department will not accept as submitted, a consistency application for an offset project if a consistency application has already been submitted for the same project, or any portion of the same project, in another participating state, unless the consistency application was rejected by the participating state solely because more of the CO<sub>2</sub> equivalent emissions reduction or carbon sequestration resulting from the offset project is projected to occur in New Jersey than in any other participating state.**

**(g) Within 30 days following the receipt of the consistency application, the Department will notify the project sponsor whether the consistency application is complete. A complete**

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**consistency application is one that is in a form prescribed by the Department and is determined by the Department to contain all applicable information and documentation required by this subchapter. In no event will a completeness determination prevent the Department from requesting additional information in order to enable the Department to make a consistency determination under (h) below.**

**(h) Within 90 days of making the completeness determination under (g) above, the Department will issue a determination as to whether the offset project is consistent with the requirements of N.J.A.C. 7:27C-10.3 and this section and the requirements of the applicable offset project standards of N.J.A.C. 7:27C-10.5, 10.6, and 10.7. For any offset project found to be consistent with these requirements, the Department will issue a consistency determination to the project sponsor. For any offset project found to lack consistency with these requirements, the Department will inform the project sponsor of the offset project's deficiencies.**

**7:27C-10.5 CO<sub>2</sub> emissions offset project standards – landfill methane (CH<sub>4</sub>) capture and destruction**

**(a) To qualify for the award of CO<sub>2</sub> offset allowances, in addition to satisfying the other applicable requirements of this subchapter, an offset project that captures and destroys methane from landfills shall meet the requirements of (b) through (f) below.**

**(b) An offset project under this section shall occur at a landfill that is not subject to the New Source Performance Standards for municipal solid waste landfills, 40 CFR Part 60, Subparts Cc and WWW.**

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**(c) The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the requirements of (b) above.**

**The project narrative shall include:**

- 1. Identification of the owners and operators of the offset project;**
- 2. The location and specifications of the landfill where the offset project will occur, including waste in place;**
- 3. Identification of the owners and operators of the landfill where the offset project will occur; and**
- 4. Specifications of the equipment to be installed and a technical schematic of the offset project.**

**(d) The emissions baseline shall represent the potential fugitive landfill emissions of methane (in tons of CO<sub>2</sub>e), as represented by the methane collected and metered for thermal destruction as part of the offset project, and shall be calculated as follows:**

$$\text{Emissions (tons CO}_2\text{e)} = (V \times M \times (1-OX) \times GWP)/2000$$

**where:**

**V = Volume of CH<sub>4</sub> collected (ft<sup>3</sup>);**

**M = Mass of CH<sub>4</sub> per cubic foot (0.04246 lbs/ft<sup>3</sup> default value at one atmosphere and 20 degrees Celsius);**

**OX = Oxidation factor (0.10), representing the estimated portion of collected CH<sub>4</sub> that would have eventually oxidized to CO<sub>2</sub> if not collected; and**

**GWP = CO<sub>2</sub>e global warming potential of CH<sub>4</sub> (28).**

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**(e) Emissions reductions shall be determined based on potential fugitive methane emissions that would have occurred at the landfill if metered methane collected from the landfill for thermal destruction as part of the offset project was not collected and destroyed. CO<sub>2</sub>e emissions reductions shall be calculated as follows:**

$$\text{Emissions Reductions (tons CO}_2\text{e)} = (V \times M \times (1 - OX) \times C_{ef} \times GWP) / 2000$$

**where:**

**V = Volume of CH<sub>4</sub> collected (ft<sub>3</sub>);**

**M = Mass of CH<sub>4</sub> per cubic foot (0.04246 lbs/ft<sup>3</sup> default value at one atmosphere and 20 degrees Celsius);**

**OX = Oxidation factor (0.10), representing the estimated portion of collected CH<sub>4</sub> that would have eventually oxidized to CO<sub>2</sub> if not collected;**

**C<sub>ef</sub> = Combustion efficiency of methane control technology (0.98); and**

**GWP = CO<sub>2</sub>e global warming potential of CH<sub>4</sub> (28).**

**(f) An offset project under this section shall employ a landfill gas collection system that provides continuous metering and data computation of landfill gas volumetric flow rate and methane concentration. Annual monitoring and verification reports shall include monthly volumetric flow rate and methane concentration data, including documentation that the methane was actually supplied to the combustion source. Monitoring and verification is also subject to the following requirements:**

**1. As part of the consistency application, the project sponsor shall submit a monitoring and verification plan, certified as required at N.J.A.C. 7:27C-10.4(e)8, that includes a quality assurance and quality control program associated with equipment used to**

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**determine landfill gas volumetric flow rate and methane concentration. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated, and calibrated based on manufacturer recommendations, as well as provisions for the retention of maintenance records for audit purposes; and**

**2. The project sponsor shall annually verify landfill gas methane composition through landfill gas sampling and independent laboratory analysis using applicable EPA laboratory test methods.**

**7:27C-10.6 CO<sub>2</sub> emissions offset project standards – sequestration of carbon due to reforestation, improved forest management, or avoided conversion**

**(a) To qualify for the award of CO<sub>2</sub> offset allowances, in addition to satisfying the other applicable requirements of this subchapter, a forest offset project shall meet the requirements of (b) through (p) below, and the forest offset protocol.**

**(b) The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of the forest offset protocol and this subchapter. The offset project description must include all information identified in sections 8.1 and 9.1 of the forest offset protocol, and any other information deemed necessary by the Department in order to determine eligibility.**

**(c) Baseline onsite carbon stocks shall be determined as required by sections 6.1.1, 6.1.2, 6.2.1, 6.2.2, 6.2.3, 6.3.1, and 6.3.2 of the forest offset protocol, as applicable.**

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**(d) Net greenhouse gas reductions and greenhouse gas removal enhancements shall be calculated as required by section 6 of the forest offset protocol. The project's risk reversal rating shall be calculated using the forest offset protocol Determination of a Forest Project's Reversal Risk Rating assessment worksheet.**

**(e) Monitoring and verification is subject to the following requirements:**

**1. Monitoring and verification reports shall include all forest offset project data reports submitted to the Department, including any additional data required by section 9.2.2 of the forest offset protocol;**

**2. The monitoring and verification plan included in the consistency application shall consist of a forest carbon inventory program, as required by section 8.1 of the forest offset protocol; and**

**3. Monitoring and verification reports shall be submitted not less frequently than once every six years, except that the first monitoring and verification report for reforestation projects must be submitted within 12 years of project commencement.**

**(f) A project sponsor shall submit a forest offset project data report to the Department for each reporting period. Each forest offset project data report must cover a single reporting period. Reporting periods must be contiguous; there must be no gaps in reporting once the first reporting period has commenced.**

**(g) Prior to the award of CO<sub>2</sub> offset allowances pursuant to N.J.A.C. 7:27C-10.9, or to any surrender of allowances pursuant to (j) and (m) below, any quantity expressed in metric tons, or metric tons of CO<sub>2</sub> equivalent, shall be converted to tons using the conversion factor**

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**specified in the definition of “ton” or “tonnage” and as further specified at N.J.A.C. 7:27C-**

**1.4(d).**

**(h) The project sponsor shall address an unintentional reversal of sequestered carbon as follows:**

**1. Notify the Department of the unintentional reversal and provide an explanation for the nature of the unintentional reversal within 30 calendar days of its discovery; and**

**2. Submit to the Department a verified estimate of current carbon stocks within the offset project boundary within one year of the discovery of the unintentional reversal.**

**(i) The project sponsor shall address an intentional reversal of sequestered carbon as follows:**

**1. Notify the Department in writing of the intentional reversal and provide a written description and explanation of the intentional reversal within 30 days of the intentional reversal; and**

**2. Submit to the Department a verified estimate of current carbon stocks within the offset project boundary within one year of the occurrence of the intentional reversal.**

**(j) If an intentional reversal occurs, and CO<sub>2</sub> offset allowances have been awarded to the offset project, the forest owner shall surrender to the Department for retirement, a quantity of CO<sub>2</sub> allowances corresponding to the quantity of CO<sub>2</sub> equivalent tons reversed within six months of notification by the Department.**

**(k) The Department will provide notification pursuant to (i) above, after the project sponsor has submitted a verified estimate of carbon stocks to the Department, or, if the project sponsor fails to submit the verified estimate of carbon stocks, after one year has elapsed since the intentional reversal occurred.**

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**(l) If the forest owner does not surrender valid CO<sub>2</sub> allowances to the Department within six months of notification by the Department pursuant to (i) above, the forest owner will be subject to enforcement action pursuant to N.J.A.C. 7:27A-3.10(u) and each CO<sub>2</sub> equivalent ton of carbon sequestration intentionally reversed will constitute a separate violation of this subchapter and applicable State law.**

**(m) Requirements for project termination are as follows:**

**1. The project sponsor shall surrender to the Department for retirement a quantity of CO<sub>2</sub> allowances in the amount calculated pursuant to project termination provisions in the forest offset protocol within six months of project termination; and**

**2. Failure to surrender CO<sub>2</sub> allowances to the Department as provided at (m)1 above will subject the project sponsor to enforcement action pursuant to N.J.A.C. 7:27A-3.10(u), and each CO<sub>2</sub> offset allowance not surrendered will constitute a separate violation of this subchapter and applicable State law.**

**(n) The Department will terminate a forest offset project if a reversal lowers a forest offset project's actual standing live carbon stocks below its project baseline standing live carbon stocks.**

**(o) Only those forest offset projects that are initially commenced on or after January 1, 2014, are eligible for an award of CO<sub>2</sub> offset allowances under this section.**

**(p) The provisions of N.J.A.C. 7:27C-10.3(d)4 and 10.4(c)1 do not apply to forest projects that have been awarded credits under a voluntary greenhouse gas reduction program. For such projects, the number of CO<sub>2</sub> offset allowances will be calculated pursuant to the**

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**requirements of this section, without regard to the quantity of credits that were awarded to the project under the voluntary program, provided that the following conditions are satisfied:**

**1. The project satisfies all other general requirements of this subchapter, including all specific requirements of this section, for all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO<sub>2</sub> offset allowances pursuant to N.J.A.C. 7:27C-10.9;**

**2. At the time of submittal of the consistency application for the project, the project submits forest offset data reports and a monitoring and verification report covering all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO<sub>2</sub> offset allowances pursuant to N.J.A.C. 7:27C-10.9. Forest offset data reports and monitoring and verification reports must meet all requirements of (e) and (f) above;**

**3. The consistency application includes information sufficient to allow the Department to make the following determinations, and the voluntary greenhouse gas program has published information on its website to allow the Department to verify the information included in the consistency application:**

**i. The offset project has met all legal and contractual requirements to allow it to terminate its relationship with the voluntary greenhouse gas program, and such termination has been completed; and**

**ii. The project sponsor or voluntary greenhouse gas program has cancelled or retired all credits that were awarded for carbon sequestration that occurred during the time periods for which the project intends to be awarded CO<sub>2</sub> offset allowances pursuant to**

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**N.J.A.C. 7:27C-10.9, and such credits were cancelled or required for the sole purpose of allowing the project to be awarded CO<sub>2</sub> offset allowances pursuant to N.J.A.C. 7:27C-10.9.**

**7:27C-10.7 CO<sub>2</sub> emissions offset project standards – avoided methane emissions from agricultural manure management operations**

**(a) To qualify for the award of CO<sub>2</sub> offset allowances, in addition to satisfying the other applicable requirements of this subchapter, an offset project that reduces CO<sub>2</sub>-equivalent emissions by capturing and destroying methane from animal manure and organic food waste using anaerobic digesters shall meet the requirements of (b) through (g) below.**

**(b) An offset project that captures and destroys methane from animal manure and organic food waste using anaerobic digesters shall:**

**1. Consist of the destruction of that portion of methane generated by an anaerobic digester that would have been generated in the absence of the offset project through the uncontrolled anaerobic storage of manure or organic food waste; and**

**2. Employ only manure-based anaerobic digester systems using livestock manure as the majority of digester feedstock, defined as more than 50 percent of the mass input into the digester on an annual basis. The remainder of the digester feedstock may be organic food waste that would have been stored in anaerobic conditions in the absence of the offset project.**

**(c) The provisions of N.J.A.C. 7:27C-10.3(d)2 and 3 do not apply to an agricultural manure management offset project if:**

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**1. The offset project is located in a state that has a market penetration rate for anaerobic digester projects of five percent or less. The market penetration rate determination shall utilize the most recent market data available at the time of submission of the consistency application pursuant to N.J.A.C. 7:27C-10.4 and shall be determined as follows:**

$$\text{MP (percent)} = \text{MG}_{\text{AD}} / \text{MG}_{\text{STATE}}$$

**where:**

**MG<sub>AD</sub> = Average annual manure generation for the number of dairy cows and swine serving all anaerobic digester projects in the applicable state at the time of submission of a consistency application pursuant to N.J.A.C. 7:27C-10.4; and**

**MG<sub>STATE</sub> = average annual manure production of all dairy cows and swine in the state at the time of submission of a consistency application pursuant to N.J.A.C. 7:27C-10.4; or**

**2. The offset project is located at a farm with 4,000 or fewer head of dairy cows, or a farm with equivalent animal units, assuming an average live weight for dairy cows (in pounds per cow) of 1,400 pounds, or, if the project is a regional-type digester, total annual manure input to the digester is designed to be less than the average annual manure produced by a farm with 4,000 or fewer head of dairy cows, or a farm with equivalent animal units, assuming an average live weight for dairy cows (in pounds per cow) of 1,400 pounds.**

**(d) The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the requirements of (b) above.**

**The offset project narrative shall include:**

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- 1. Identification of the owners and operators of the offset project;**
- 2. The location and specifications of the facility where the offset project will occur;**
- 3. Identification of the owners and operators of the facility where the offset project will occur;**
- 4. Specifications of the equipment to be installed and a technical schematic of the offset project; and**
- 5. The location and specifications of the facilities from which anaerobic digester influent will be received, if different from the facility where the offset project will occur.**

(e) The emissions baseline shall represent the potential emissions of the methane that would have been produced in a baseline scenario under uncontrolled anaerobic storage conditions and released directly to the atmosphere in the absence of the offset project, and is calculated as follows:

- 1. Baseline methane emissions shall be calculated as follows:**

$$E_b = (V_m \times M) / 2000 \times GWP$$

where:

**$E_b$  = Potential CO<sub>2</sub>e emissions due to calculated CH<sub>4</sub> production under site-specific anaerobic storage and weather conditions (tons);**

**$V_m$  = Volume of CH<sub>4</sub> produced each month from decomposition of volatile solids in a baseline uncontrolled anaerobic storage scenario under site-specific storage and weather conditions for the facility at which the manure or organic food waste is generated (ft<sup>3</sup>);**

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**M = Mass of CH<sub>4</sub> per cubic foot (0.04246 lb/ft<sup>3</sup> default value at one atmosphere and 20 degrees Celsius); and**

**GWP = Global warming potential of CH<sub>4</sub> (28);**

**2. The estimated amount of volatile solids decomposed each month under the uncontrolled anaerobic storage baseline scenario (kg) shall be calculated as follows:**

$$VS_{\text{dec}} = VS_{\text{avail}} \times f$$

**where:**

**VS = volatile solids as determined from the equation:**

$$VS = M_m \times TS_{\text{percent}} \times VS_{\text{percent}}$$

**where:**

**M<sub>m</sub> = mass of manure or organic food waste produced per month (kg);**

**TS<sub>percent</sub> = concentration (percent) of total solids in manure or organic food waste as determined through EPA 160.3 testing method (U.S.EPA Method Number 160.3, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020)), which is incorporated herein by reference, which is available at [EPA's website at www.epa.gov](http://www.epa.gov); and**

**VS<sub>percent</sub> = concentration (percent) of volatile solids in total solids as determined through EPA 160.4 testing method (U.S.EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020), which is incorporated herein by reference, and which is available at the EPA's website;**

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**VS<sub>avail</sub> = volatile solids available for decomposition in manure or organic food waste storage each month as determined from the equation:**

$$VS_{avail} = VS_p + \frac{1}{2} VS_{in} - VS_{out}$$

**where:**

**VS<sub>p</sub> = volatile solids present in manure or organic food waste storage at beginning of month (left over from previous month) (kg);**

**VS<sub>in</sub> = volatile solids added to manure or organic food waste storage during the course of the month (kg). The factor of ½ is multiplied by this number to represent the average mass of volatile solids available for decomposition for the entire duration of the month; and**

**VS<sub>out</sub> = volatile solids removed from the manure or organic food waste storage for land application or export (assumed value based on standard farm practice); and**

**f = van't Hoff-Arrhenius factor for the specific month as determined using the equation below. Using a base temperature of 30 degrees Celsius, the equation is as follows:**

$$f = \exp\left\{\frac{E(T_2 - T_1)}{(GC \times T_1 \times T_2)}\right\}$$

**where:**

**f = conversion efficiency of VS to CH<sub>4</sub> per month;**

**E = activation energy constant (15,175 cal/mol);**

**T<sub>2</sub> = average monthly ambient temperature for facility where manure or organic food waste is generated (converted from**

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**degrees Celsius to degrees Kelvin) as determined from the nearest National Weather Service certified weather station (if reported temperature in degrees Celsius > five degrees Celsius; if reported temperature in degrees Celsius < five degrees Celsius, then  $f = 0.104$ ); and**

**$T_1 = 303.15$  (30 degrees Celsius converted to degrees Kelvin); and**

**GC = ideal gas constant (1.987 cal/K mol); and**

**3. The volume of methane produced, in cubic feet (ft<sup>3</sup>), from decomposition of volatile solids shall be calculated as follows:**

$$V_m = (VS_{dec} \times B_o) \times 35.3147$$

**where:**

**$V_m$  = volume of CH<sub>4</sub> (ft<sup>3</sup>);**

**$VS_{dec}$  = volatile solids decomposed (kg); and**

**$B_o$  = manure or organic food waste type-specific maximum methane generation constant (m<sup>3</sup> CH<sub>4</sub>/kg VS decomposed). For dairy cow manure,  $B_o = 0.24$  m<sup>3</sup> CH<sub>4</sub>/kg VS decomposed. The methane generation constant for other types of manure shall be those cited at EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2010, Annex 3, Table A-180 Methodology for Estimating CH<sub>4</sub> and N<sub>2</sub>O Emissions from Manure Management (EPA, February 2017), as supplemented or amended, and which is incorporated herein by reference and which is available from EPA at its website at**

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**www.epa.gov, unless the project sponsor proposes an alternate methane generation constant and that alternate is approved by the Department. If the project sponsor proposes to use a methane generation constant other than the ones found in the above-cited reference, the project sponsor shall provide justification and documentation to the Department.**

**(f) Emissions reductions shall be calculated as follows:**

$$\text{ERt} = \text{Eb} - \text{Ep}$$

where:

**ERt = CO<sub>2e</sub> emissions reductions due to project activities (tons);**

**Eb = Potential CO<sub>2e</sub> emissions due to calculated methane production under site-specific anaerobic storage and weather conditions (tons);**

**Ep = CO<sub>2e</sub> emissions due to project activities additional to baseline (tons), including, but not limited to, manure transportation, flaring, venting, and effluent management.**

**(g) Emissions reductions calculated pursuant to (f) above may not exceed the potential emissions of the anaerobic digester, as represented by the annual volume of methane produced by the anaerobic digester, as monitored pursuant to (i) below. CO<sub>2</sub> emissions due to transportation of manure and organic food waste from the site where the manure and organic food waste was generated to the anaerobic digester shall be subtracted from the emissions reduction calculated pursuant to (e)1, 2, and 3 above.**

**(h) Transport CO<sub>2</sub> emissions used in emissions reductions calculated pursuant to (f) above must be determined through one of the following methods:**

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**1. Documentation of transport fuel use for all shipments of manure and organic food waste from off-site to the anaerobic digester during each reporting year and a log of transport miles for each shipment. Off-site is defined as a location that is not contiguous with the property where the anaerobic digester is located. CO<sub>2</sub> emissions shall be determined through the application of an emissions factor for the fuel type used. For this method of determination, the emissions factor for the use of diesel fuel is 22.912 pounds of CO<sub>2</sub> per gallon, and for the use of gasoline, 19.878 pounds of CO<sub>2</sub> per gallon. If other fuel is used, the project sponsor, as part of the monitoring and verification report submitted pursuant to N.J.A.C. 7:27C-10.9(c) or (d) shall submit an emissions factor for approval by the Department, as technically appropriate; or**

**2. Documentation of total tons of manure and organic food waste transported from off-site for input into the anaerobic digester during each reporting year, as monitored pursuant to (i)1 below, and a log of transport miles and fuel type used for each shipment. CO<sub>2</sub> emissions shall be determined through the application of a ton-mile transport emissions factor for the fuel type used. The appropriate emissions factor shall be applied for each ton of manure delivered and multiplied by the number of miles transported. For this method of determination, the emissions factor for the use of diesel fuel is 0.131 pounds of CO<sub>2</sub> per ton-mile, and for the use of gasoline is 0.133 pounds of CO<sub>2</sub> per ton-mile. If other fuel is used, the project sponsor shall submit an emissions factor for approval by the Department, as technically appropriate.**

**(i) An offset project shall employ a system that provides metering of biogas volumetric flow rate and determination of methane concentration. Annual monitoring and verification**

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**reports shall include monthly biogas volumetric flow rate and methane concentration**

**determination. Monitoring and verification shall also meet the following requirements:**

**1. If the offset project is a regional-type digester, manure and organic food waste from each distinct source supplying to the anaerobic digester shall be sampled monthly to determine the amount of volatile solids present. Any emissions reduction will be calculated according to mass of manure and organic food waste, in kilograms (kg) being digested and percentage of volatile solids present before digestion, consistent with (e) above and (i)3 below, and apportioned accordingly among sources. The project sponsor shall provide supporting material and receipts tracking the monthly receipt of manure and organic food waste in kilograms (kg) used to supply the anaerobic digester from each supplier;**

**2. If the offset project includes the digestion of organic food waste eligible pursuant to (b)2 above, organic food waste shall be sampled monthly to determine the amount of volatile solids present before digestion, consistent with the requirements of (e) above and (i)3 below, and apportioned accordingly; and**

**3. The project sponsor shall submit a monitoring and verification plan as part of the consistency application that includes a quality assurance and quality control program associated with equipment used to determine biogas volumetric flow rate and methane composition. The monitoring and verification plan shall be consistent with the applicable input monitoring requirements listed in Table 5 below. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated, and calibrated based on manufacturer's recommendations, as well as**

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**provisions for the retention of maintenance records for audit purposes. The monitoring and verification plan shall be certified by an accredited independent verifier.**

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<b>Table 5 Monitoring Requirements</b>			
<b><u>Parameter</u></b>	<b><u>Measurement Unit</u></b>	<b><u>Frequency of Sampling</u></b>	<b><u>Sampling Method(s)</u></b>
Influent flow (mass) into the digester	Kilograms (kg) per month (wet mass)	Monthly total into the digester	In descending order of preference: 1. Recorded mass; 2. Digester influent pump flow; or 3. Livestock population and application of American Society of Agricultural and Biological Engineers (ASABE) standard (ASAE D384.2, Manure Production and Characteristics, March 2005, incorporated herein by reference, as supplemented or amended, and which is available from the American National Standards Institute (ANSI) at <a href="http://www.ansi.org">http://www.ansi.org</a> .
Influent total solids concentration (TS)	Percent (of sample)	Monthly, depending upon recorded variations	U.S. EPA Method Number 160.3, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020), which is incorporated by reference, and available at the EPA's website at <a href="http://www.epa.gov">www.epa.gov</a> .
Influent volatile solids (VS) concentration	Percent (of TS)	Monthly, depending upon recorded variations	EPA Test Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020)), which is incorporated herein by reference, as supplemented or amended, and available at the EPA's website, <a href="http://www.epa.gov">www.epa.gov</a> .
Average monthly ambient temperature	Temperature degrees Celsius	Monthly (based on farm averages)	Closest National Weather Service-certified weather station
Volume of biogas produced by digester	Standard cubic feet (scf)	Continuous, totalized monthly	Flow meter

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Methane composition of biogas produced by digester	Percent (of sample)	Quarterly	Bag sampling and third-party laboratory analysis using applicable EPA test methods
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**7:27C-10.8 Accreditation of independent verifiers**

**(a) To be accredited by the Department to provide verification services as required of project sponsors under this subchapter, an independent verifier shall demonstrate knowledge of:**

- 1. Utilization of engineering principles;**
- 2. Quantification of greenhouse gas emissions;**
- 3. Development and evaluation of air emissions inventories;**
- 4. Auditing and accounting principles;**
- 5. Information management systems;**
- 6. The requirements of this subchapter and other applicable requirements of this**

**chapter; and**

**7. The data collection, quantification, monitoring, and verification requirements for the individual offset categories specified at N.J.A.C. 7:27C-10.5, 10.6, and 10.7.**

**(b) In addition to the knowledge requirements of (a) above, to be accredited by the Department to provide verification services as required of project sponsors under this subchapter, an independent verifier shall demonstrate:**

- 1. That there is no direct or indirect financial relationship, beyond a contract for provision of verification services, between the independent verifier or his or her employees and any offset project developer or project sponsor;**

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**2. That the independent verifier employs staff with professional licenses, knowledge, and experience appropriate to the specific category or categories of offset projects at N.J.A.C. 7:27C-10.5, 10.6, and 10.7 to be verified;**

**3. Coverage of a minimum of \$1,000,000 of professional liability insurance. If the insurance is in the name of a related entity, the independent verifier shall disclose the financial relationship between the independent verifier and the related entity, and provide documentation supporting the description of the relationship;**

**4. Implementation of an adequate management protocol to identify potential conflicts of interest with regard to an offset project, offset project developer, or project sponsor, or any other party with a direct or indirect financial interest in an offset project that is seeking or has been granted approval of a consistency application pursuant to N.J.A.C. 7:27C-10.4(e), and remedy any such conflicts of interest prior to providing verification services; and**

**5. Prior to submitting an application for accreditation, successfully complete any training course, workshop, or test developed by the Department to ensure that an independent verifier has sufficient demonstrated knowledge pursuant to (a) above to provide verification services under this subchapter.**

**(c) An application for accreditation shall not contain any proprietary information, but shall include the following:**

**1. The applicant's name, address, e-mail address, telephone number, and facsimile transmission number;**

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**2. Documentation that the applicant has at least two years of experience in each of the knowledge areas at (a) above;**

**3. A sample of at least one work product that provides supporting evidence that the applicant meets the requirements at (a) and (b) above. The work product shall have been produced, in whole or in part, by the applicant and shall consist of a final report or other material provided to a client under contract in previous work. For a work product that was jointly produced by the applicant and another entity, the role of the applicant in the work product shall be clearly explained;**

**4. Documentation that the applicant holds professional liability insurance as required pursuant to (b)4 above; and**

**5. Documentation that the applicant has implemented an adequate management protocol to address and remedy any conflict of interest issues that may arise, as required pursuant to (b)5 above.**

**(d) The Department will approve or deny a complete application for accreditation within 45 days after submission. Accreditation of an independent verifier is for a period of three years from the date of application approval.**

**(e) The Department will accept the accreditation of an independent verifier who is accredited in another participating state where the Department has determined that the accreditation requirements of the other participating state are substantially equivalent to the requirements of this section.**

**(f) Prior to engaging in verification services for a project sponsor, an accredited independent verifier shall disclose all relevant information to the Department to allow for an evaluation of**

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**potential conflict of interest with respect to an offset project, offset project developer, or project sponsor. The accredited independent verifier shall disclose information concerning its ownership, past and current clients, related entities, as well as any other facts or circumstances that have the potential to create a conflict of interest.**

**(g) An accredited independent verifier shall have an ongoing obligation to disclose to the Department any facts or circumstances that may give rise to a conflict of interest with respect to an offset project, offset project developer, or project sponsor.**

**(h) The Department may reject a verification report and certification from an accredited independent verifier, submitted as part of a consistency application required pursuant to N.J.A.C. 7:27C-10.4 or submitted as part of a monitoring and verification report submitted pursuant to N.J.A.C. 7:27C-10.9, if the Department determines that the accredited independent verifier has a conflict of interest related to the offset project, offset project developer, or project sponsor.**

**(i) The Department may revoke the accreditation of an accredited independent verifier at any time, for any of the following:**

**1. Failure by the accredited independent verifier to fully disclose any issues that may lead to a conflict of interest situation with respect to an offset project, offset project developer, or project sponsor;**

**2. A change in staffing or other criteria, so that the accredited independent verifier is no longer qualified;**

**3. Negligence or neglect of responsibilities by the accredited independent verifier pursuant to the requirements of this subchapter; or**

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**4. Intentional misrepresentation of data or other fraud by the accredited independent verifier.**

**7:27C-10.9 Award and recording of CO<sub>2</sub> offset allowances**

**(a) Following the issuance of a consistency determination under N.J.A.C. 7:27C-10.4(i) and the submission and approval of a monitoring and verification report under the provisions of (g) and (h) below, the Department will award one CO<sub>2</sub> offset allowance for each ton of demonstrated reduction in CO<sub>2</sub> or CO<sub>2</sub>-equivalent emissions or sequestration of CO<sub>2</sub>, which it will record in the project sponsor's general account. If an allowance is represented in metric tons, the Department will award 1.1023 tons for every metric ton and will round down the total CO<sub>2</sub> offset allowances awarded to the nearest whole ton.**

**(b) For CO<sub>2</sub> emissions offset projects undertaken prior to January 1, 2020, the project sponsor shall submit a monitoring and verification report covering the pre-2020 period by June 30, 2020.**

**(c) For CO<sub>2</sub> emissions offset projects undertaken on or after January 1, 2020, the project sponsor shall submit a monitoring and verification report within six months following the completion of the last calendar year during which the offset project achieved CO<sub>2</sub>-equivalent emissions reductions or sequestration of CO<sub>2</sub> for which the project sponsor seeks the award of CO<sub>2</sub> offset allowances.**

**(d) For an offset project, a monitoring and verification report shall be submitted in a form prescribed by the Department and shall include:**

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**1. The project sponsor's name, address, e-mail address, telephone number, facsimile transmission number, and account number;**

**2. The CO<sub>2</sub> emissions reduction or CO<sub>2</sub> sequestration determination as required by the relevant provisions of N.J.A.C. 7:27C-10.5, 10.6, and 10.7, including a demonstration that the project sponsor complied with the required quantification, monitoring, and verification procedures under this subchapter, as well as those outlined in the consistency application approved pursuant to N.J.A.C. 7:27C-10.4(i);**

**3. A signed certification statement by the project sponsor that reads "The undersigned project sponsor hereby confirms and attests that the offset project upon which this monitoring and verification report is based is in full compliance with all of the requirements of this subchapter. The project sponsor holds the legal rights to the offset project or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO<sub>2</sub> offset allowances under N.J.A.C. 7:27C-10 is contingent on meeting the requirements of this subchapter. I authorize the Department to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in the consistency application that was the subject of a consistency determination by the Department. I understand that this right to audit shall include the right to enter the physical location of the offset project and to make available to the Department any and all documentation relating to the offset project at the Department's request. I submit to the legal jurisdiction of the State of New Jersey.";**

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**4. A certification signed by the project sponsor certifying that all offset projects for which the project sponsor has received CO<sub>2</sub> offset allowances under this subchapter (or corresponding provisions in the rules of other participating states), under the project sponsor's ownership or control (or under the ownership or control of any entity that controls, is controlled by, or has common control with the sponsor) are in compliance with all applicable requirements of the CO<sub>2</sub> Budget Trading Program in all participating states;**

**5. A verification report and certification signed by an accredited independent verifier that documents that he or she has reviewed the monitoring and verification report and evaluated the following in relation to the applicable requirements at N.J.A.C. 7:27C-10.5, 10.6, and 10.7, and any applicable guidance issued by the Department:**

**i. The adequacy and validity of information supplied by the project sponsor to determine CO<sub>2</sub> emissions reductions or CO<sub>2</sub> sequestration pursuant to the applicable requirements at N.J.A.C. 7:27C-10.5, 10.6, and 10.7;**

**ii. The adequacy and consistency of methods used to quantify, monitor, and verify CO<sub>2</sub> emissions reductions and CO<sub>2</sub> sequestration in accordance with the applicable requirements at N.J.A.C. 7:27C-10.5, 10.6, and 10.7 and as outlined in the consistency application approved pursuant to N.J.A.C. 7:27C-10.4(i);**

**iii. The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of N.J.A.C. 7:27C-10.5, 10.6, and 10.7; and**

**iv. Such other evaluations and verification reviews as the Department may require;**

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**6. Disclosure of any voluntary or mandatory programs, other than the CO<sub>2</sub> Budget Trading Program, to which greenhouse gas emissions data related to the offset project has been, or will be, reported; and**

**7. For an offset project located in a state or United States jurisdiction that is not a participating state, a demonstration that the project sponsor has complied with all requirements of the cooperating regulatory agency in the state or United States jurisdiction where the offset project is located.**

**(e) Following the receipt of a monitoring and verification report pursuant to (c) or (d) above, the Department will determine whether the report is complete for the purposes of commencing review. A complete monitoring and verification report is one that is in an approved form and the Department has determined to be complete for the purpose of commencing its review. In no event shall a completeness determination prevent the Department from requesting additional information needed by the Department to approve or deny the submitted monitoring and verification report.**

**(f) The Department will only accept a monitoring and verification report for an offset project for which the Department has issued a consistency determination pursuant to N.J.A.C. 7:27C-10.4(i) and will not accept a monitoring and verification report for an offset project for which another participating state has issued a consistency determination.**

**(g) The Department will approve or deny a complete monitoring and verification report, in a format approved by the Department and filed with the Department pursuant to (b), (c), (d), and (f) above, within 45 days following receipt of a complete report.**

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## **SUBCHAPTER 11. CO<sub>2</sub> ALLOWANCE AUCTIONS**

### **7:27C-11.1 Auction of CO<sub>2</sub> allowances**

**(a) The Department will participate in, or conduct, auctions to sell CO<sub>2</sub> allowances allocated to the consumer benefit account in accordance with N.J.A.C. 7:27C-5, CO<sub>2</sub> Allowance Allocations, and this subchapter.**

**(b) The Department may delegate the implementation and administrative support functions for any CO<sub>2</sub> allowance auction conducted pursuant to this subchapter to an agent qualified to conduct auctions, including a regional entity, provided that such agent shall perform all such functions under the direction and oversight of the Department.**

**(c) The Department will participate in a multistate CO<sub>2</sub> allowance auction if it determines that:**

- 1. A multistate auction capability and process is in place for the participating states;**
- 2. The multistate auction can provide benefits to the State that meet or exceed the benefits conferred on the State through its own State-run auction process; and**
- 3. The multistate auction process would be consistent with the process described in this subchapter.**

**(d) Should the Department find that the conditions in (c) above have not been satisfied, the Department may conduct a New Jersey auction pursuant to N.J.A.C. 7:27C-5 and this subchapter or may take such other action as it deems appropriate.**

**(e) The Department will retain its authority to enforce compliance with all sections of this chapter and will retain control over the proceeds associated with the sale of all of New Jersey's CO<sub>2</sub>**

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**allowances, whether sold in a multistate or New Jersey CO<sub>2</sub> allowance auction and will credit the proceeds to the Global Warming Solutions Fund established pursuant to N.J.S.A. 26:2C-50.**

#### **7:27C-11.2 Auction format**

**(a) The format of the CO<sub>2</sub> allowance auctions will be one or more of the following:**

- 1. Uniform-price sealed-bid;**
- 2. Discriminatory-price sealed-bid;**
- 3. Ascending price, multiple-round; or**
- 4. Descending price, multiple-round.**

**(b) CO<sub>2</sub> allowances will be auctioned in lots of 1,000 CO<sub>2</sub> allowances, unless the volume of CO<sub>2</sub> allowances auctioned requires an individual lot size smaller than 1,000.**

#### **7:27C-11.3 Auction timing and CO<sub>2</sub> allowance submission schedule**

**(a) CO<sub>2</sub> allowance auctions will be held no less frequently than annually, and as frequently as the Department determines is necessary and practical to ensure the availability of CO<sub>2</sub> allowances to CO<sub>2</sub> budget units and CO<sub>2</sub> budget sources and to support the effective functioning of the CO<sub>2</sub> allowance market.**

**(b) Prior to the end of each control period, initial control period, or interim control period, the Department will make available for sale by auction all CO<sub>2</sub> allowances held in the consumer benefit account that are designated for the allocation years associated with that control period. This will not include CO<sub>2</sub> allowances set aside to be sold directly to certified**

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**dispatch agreement facilities with fixed-price contracts pursuant to N.J.A.C. 7:27C-5.5, or CO<sub>2</sub> allowances set aside to be retired pursuant to N.J.A.C. 7:27C-5.3.**

**(c) In each CO<sub>2</sub> allowance auction, the Department will make available for sale CO<sub>2</sub> allowances designated for the allocation years associated with that control period or initial control period and CO<sub>2</sub> allowances designated for the allocation years associated with a future control period, in a number as determined to be appropriate by the Department, in order to ensure the availability of sufficient allowances to protect the financial stability of CO<sub>2</sub> budget sources in New Jersey.**

**(d) The number of CO<sub>2</sub> allowances to be made available for sale in a specific auction will be disclosed in the notice of CO<sub>2</sub> allowance auction issued pursuant to N.J.A.C. 7:27C-11.5.**

**(e) Auctions of CO<sub>2</sub> allowances will include a CO<sub>2</sub> cost containment reserve and a CCR trigger price, as provided at N.J.A.C. 7:27C-5.2(d).**

#### **7:27C-11.4 Reserve price**

**(a) A reserve price will be established for each CO<sub>2</sub> allowance auction.**

**(b) The reserve price will be either the minimum reserve price or the CCR trigger price, as specified at N.J.A.C. 7:27C-1.2, Table 1 of the definition of “CO<sub>2</sub> cost containment reserve trigger price” and N.J.A.C. 7:27C-9.**

#### **7:27C-11.5 Auction calendar and notice**

**(a) A calendar of anticipated auction dates will be available on the CO<sub>2</sub> allowance auction website, [www.rggi.org/auctions](http://www.rggi.org/auctions). The calendar will indicate the auction format and the**

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**number of allowances and allocation years of allowances to be auctioned at each auction.**

**The calendar may periodically be revised, including the anticipated dates of future auctions, provided that the information relevant to the next scheduled CO<sub>2</sub> allowance auction will be fixed no later than 45 calendar days prior to such auction. The calendar will include the dates of at least the next four CO<sub>2</sub> allowance auctions and may also include the anticipated number of allowances to be auctioned at each future auction.**

**(b) A notice of each CO<sub>2</sub> allowance auction will be provided on the CO<sub>2</sub> allowance auction website no later than 45 days prior to the date upon which the auction will be conducted and may be transmitted electronically to parties requesting such notification, provided they have submitted an e-mail address to the New Jersey RGGI program contact person. The RGGI program contact for each participating state, including New Jersey, is listed on the RGGI website at [www.rggi.org](http://www.rggi.org).**

**(c) In addition to the information specified at N.J.A.C. 7:27C-9.1(a), the notice of CO<sub>2</sub> allowance auction will include, but not be limited to, the following:**

- 1. The date, time, and location of the CO<sub>2</sub> allowance auction, including the Internet address or electronic address for the CO<sub>2</sub> allowance auction location, as applicable;**
- 2. The format for the CO<sub>2</sub> allowance auction;**
- 3. The categories of bidders who will be eligible to bid;**
- 4. The number and allocation years of New Jersey CO<sub>2</sub> allowances to be auctioned;**
- 5. The minimum reserve price;**
- 6. All information regarding the CO<sub>2</sub> cost containment reserve, required to be in the notice pursuant to N.J.A.C. 7:27C-9.1(a);**

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**7. The procedures for conducting the CO<sub>2</sub> allowance auction, including the required bid submission format and process, and information regarding financial settling of CO<sub>2</sub>**

**allowance payments;**

**8. All CO<sub>2</sub> allowance auction participation requirements;**

**9. The amount and type of financial security required and instructions for submitting acceptable financial surety;**

**10. Participation limits, such as bidding limits that may apply to an individual bidder or a group of related bidders;**

**11. Application instructions for applying to participate in the CO<sub>2</sub> allowance auction;**

**12. Identification of a New Jersey auction contact person for further information; and**

**13. Other pertinent rules or procedures of the auction as may be required to ensure a transparent, fair, and competitive auction.**

#### **7:27C-11.6 Auction participant requirements**

**(a) To be classified by the Department as a bidder eligible to participate in a specific CO<sub>2</sub> allowance auction, a qualified participant must:**

**1. Be a member of a category of those eligible to participate in the specified CO<sub>2</sub> allowance action as indicated by the notice of CO<sub>2</sub> allowance auction issued pursuant to N.J.A.C. 7:27C-11.5(b);**

**2. Open and maintain a compliance account or general account, established pursuant to N.J.A.C. 7:27C-6.2(a) or (b), respectively; and**

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**3. Submit financial security, such as a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a manner and form acceptable to the Department, as specified in the notice of CO<sub>2</sub> allowance auction issued pursuant to N.J.A.C. 7:27C-11.5(b).**

**(b) Only one who meets the requirements at (a) above will be classified by the Department as a bidder and approved to participate in a specified CO<sub>2</sub> allowance auction.**

#### **7:27C-11.7 Auction participant eligibility**

**(a) The Department will announce the categories of parties that are eligible to participate in a specific CO<sub>2</sub> allowance auction as part of the notice of CO<sub>2</sub> allowance auction, provided that an owner or operator of a CO<sub>2</sub> budget unit located in New Jersey is always eligible to participate in a CO<sub>2</sub> allowance auction.**

**(b) For any CO<sub>2</sub> allowance auction, the following categories of parties may be eligible to participate:**

**1. The owner or operator of a CO<sub>2</sub> budget unit located in New Jersey, who is always eligible to participate, pursuant to (a) above;**

**2. The owner or operator of a CO<sub>2</sub> budget unit located in a participating state;**

**3. The owner or operator of a CO<sub>2</sub> budget unit located outside of New Jersey, but within those states that have final CO<sub>2</sub> budget trading regulatory provisions in place at the time of the CO<sub>2</sub> allowance auction and are participating states;**

**4. The owner of a fossil fuel-fired generation unit located outside of the participating states;**

**5. A broker;**

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- 6. An environmental group;**
- 7. A financial or investment institution; and**
- 8. Any other market participant, as may be specified in the notice of CO<sub>2</sub> allowance auction, with or without limitation.**

#### **7:27C-11.8 Auction participant qualification**

- (a) A person who intends to participate in a CO<sub>2</sub> allowance auction, or auctions, shall submit a qualification application to the Department, in the form and manner specified in the notice of CO<sub>2</sub> allowance auction.**
- (b) The deadline for submitting a qualification application will be established in the notice of CO<sub>2</sub> allowance auction and will be at least 15 days after the publication of such notice.**
- (c) As part of a qualification application, an applicant shall provide information and documentation relating to the applicant's ability and authority to execute bids and honor contractual obligations, as well as information required to ensure adherence to the auction requirements and procedures specified in this subchapter, as follows:**
  - 1. Identification by the applicant of either a compliance account or general account, established pursuant to N.J.A.C. 7:27C-6.2(a) or (b), and identification of the CO<sub>2</sub> authorized account representative for such compliance account or general account;**
  - 2. Information and documentation regarding the corporate identity, ownership, affiliations, and capital structure of the entity represented by the applicant;**

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**3. Identification of any indictment or felony conviction of the applicant or any member, director, principal, partner, or officer of the entity represented by the applicant or any affiliate or related entity;**

**4. Identification of any previous or pending investigation of the applicant or the entity represented by the applicant or any affiliate or related entity, with respect to any alleged violation of any rule, regulation, or law associated with any commodity market or exchange; and**

**5. Such other information and declarations as the Department determines may be required of an applicant in order to evaluate prospective auction participants and ensure the integrity of the CO<sub>2</sub> allowance auction process in accordance with the requirements and procedures for CO<sub>2</sub> allowance auctions established in this subchapter.**

**(d) The Department will determine whether a qualification application is complete, or incomplete, or otherwise deficient. If the Department determines that an application is incomplete or otherwise deficient, the applicant will be given a reasonable opportunity, and in no event less than five business days and no more than 10 business days, as specified in the notice of CO<sub>2</sub> allowance auction, to provide additional information to the Department in order to complete the application or remedy any application deficiency.**

**(e) The Department will review a complete qualification application and make a determination as to whether the applicant is qualified to participate in CO<sub>2</sub> allowance auctions. The Department will make a determination as to the qualification status of the applicant by the deadline for such determination specified in the notice of CO<sub>2</sub> allowance auction.**

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**(f) The Department may deny qualification to an applicant based on information submitted in a qualification application in order to ensure the integrity of the CO<sub>2</sub> allowance auction process in accordance with the requirements and procedures for auctions established at N.J.A.C. 7:27C-11.6, 11.7, 11.9, 11.10, and 11.11.**

**(g) The Department may revoke the qualification status of a qualified participant, if he or she fails to comply with the applicable requirements of this subchapter, or if the Department determines that he or she has knowingly provided false or misleading information or withheld pertinent information from the qualification application submitted pursuant to (a) above. The Department may also prohibit a qualified participant who has engaged in such conduct from participating in future CO<sub>2</sub> allowance auctions where the Department determines that the prior conduct could compromise the integrity of a subsequent CO<sub>2</sub> allowance auction.**

**(h) A qualified participant will remain qualified indefinitely to participate in all CO<sub>2</sub> allowance auctions after the Department's qualification determination, provided that there has been no material change to the information supplied to the Department in the qualification application submitted pursuant to (a) above. If there is any material change to the information in the qualification application submitted pursuant to (a) above, the qualification status will expire as of the date of such change, pending the submission of a new qualification application pursuant to (a) above and a determination by the Department that the applicant is qualified to participate in CO<sub>2</sub> allowance auctions.**

**(i) Prior to each CO<sub>2</sub> allowance auction, a qualified participant who intends to participate in the auction shall notify the Department, through a notice of intent to bid, that he or she**

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**intends to participate in the upcoming CO<sub>2</sub> allowance auction. Such notice shall be submitted to the Department by the same date as that required for submitting a qualification application established in the notice of CO<sub>2</sub> allowance auction for such auction.**

**(j) As part of a notice of intent to bid submitted to the Department pursuant to (i) above, a qualified participant shall notify the Department whether there has been any material change to the information supplied in the qualification application submitted pursuant to (a) above. Examples of what constitutes a material change are included on RGGI's website ([www.rggi.org](http://www.rggi.org)) as part of the Intent to Bid form/materials.**

#### **7:27C-11.9 Submission of financial security**

**(a) In order to participate in any specific CO<sub>2</sub> allowance auction, a qualified participant shall provide financial security to the Department, such as a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form and manner prescribed by the Department in the notice of CO<sub>2</sub> allowance auction.**

**(b) The Department will approve the qualified participant to participate as a bidder in the specified CO<sub>2</sub> allowance auction after the Department has approved the financial security submitted pursuant to (a) above,**

**(c) A qualified participant who submits financial security may request return of such financial security at any time prior to or following any CO<sub>2</sub> allowance auction, subject to the following limitations:**

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**1. Any request for the return of financial security prior to the conduct of a CO<sub>2</sub> allowance auction will result in the Department revoking approval to participate in such CO<sub>2</sub> allowance auction, as of the date of such request;**

**2. The Department will not return such financial security if the Department has any current or pending claim to such financial security as a result of the failure of the bidder to abide by the requirements of this subchapter or to pay the full amount of any submitted bid when payment is due; and**

**3. Financial security may be forfeited to the Department in the event the bidder's offer to purchase CO<sub>2</sub> allowances is accepted and the bidder fails to tender payment of the full amount when due.**

#### **7:27C-11.10 Bidder limitations**

**(a) A bidder shall submit a bid in an amount that does not exceed the amount of financial security provided to the Department.**

**(b) A bidder, including any affiliate or agent of such bidder, or any combination of bidders with related beneficial interests, shall purchase no more than 25 percent of the CO<sub>2</sub> allowances offered for sale in any one CO<sub>2</sub> allowance auction. Such limitation, which will not be increased by CCR allowances, will be published in the auction notice pursuant to N.J.A.C.**

**7:27C-11.5(b).**

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**7:27C-11.11 Bid submittal requirements**

- (a) All bids shall be submitted in a form and manner prescribed by the Department, which the Department will make available on the CO<sub>2</sub> allowance auction website, as appropriate.**
- (b) A bidder shall not use or employ any manipulative, misleading, or deceptive practice in connection with its prequalification application or purchase of allowances from the Department, including, but not limited to, any practice that contravenes or violates any applicable Federal or State law, rules, or regulation.**
- (c) A bid submitted at a CO<sub>2</sub> allowance auction is a binding offer for the purchase of CO<sub>2</sub> allowances.**

**7:27C-11.12 Approval of auction results**

- (a) An independent monitor, such as a certified public accounting firm or similar entity shall observe the conduct and outcome of each auction and issue a report to the Department in accordance with professional auditing standards addressing whether the auction was conducted in accordance with the rules and procedures in the respective notice of CO<sub>2</sub> allowance auction. Upon receipt and approval by the Department of the report and upon payment in full by successful bidders, the Department shall transfer or have transferred the corresponding CO<sub>2</sub> allowances to each successful bidder's applicable compliance or general account.**
- (b) The Department will approve or disapprove the outcome of a CO<sub>2</sub> allowance auction following the completion of the auction, based on an evaluation, in consultation with an independent monitor, as provided at (a) above, of whether the auction was conducted in**

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accordance with the procedures and requirements at N.J.A.C. 7:27C-5 and this subchapter and whether there was any indication of collusive behavior among auction participants or attempts at market manipulation that impacted the results of the auction.

(c) In advising the Department or its agent, the independent monitor will monitor each CO<sub>2</sub> allowance auction and develop and apply data collection methods, metrics, and analytic techniques, and thresholds for identifying any bidding behavior or activity that may have a significant impact on the efficiency and performance of such auctions, including, but not limited to, collusion, market power, or price manipulation.

(d) The independent monitor shall also monitor allowance market data and information known to the Department, including allowance transactions and associated pricing reported in COATS, and other relevant data and information to ensure fair competition, efficient pricing, and protection against collusive or manipulative behavior in the CO<sub>2</sub> allowance auctions and the CO<sub>2</sub> Budget Trading Program.

#### **7:27C-11.13 Award of CO<sub>2</sub> allowances to winning bidders**

Following the approval of the results of a CO<sub>2</sub> allowance auction by the Department pursuant to N.J.A.C. 7:27C-11.12 and the settlement of financial transactions by a winning bidder, the Department will award CO<sub>2</sub> allowances to such winning bidder in a number equal to the number of CO<sub>2</sub> allowances represented in winning bids submitted by the bidder.

(b) The Department will allocate CO<sub>2</sub> allowances to the compliance account or general account identified in the qualification application of a winning bidder, in a number equal to the CO<sub>2</sub> allowances awarded to the bidder pursuant to (a) above.

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**7:27C-11.14 Publication of auction results**

**(a) After the Department has approved the results of a CO<sub>2</sub> allowance auction pursuant to N.J.A.C. 7:27C-11.12, and no later than 10 days following the allocation of CO<sub>2</sub> allowances to the CO<sub>2</sub> compliance or general accounts of winning bidders pursuant to N.J.A.C. 7:27C-11.13, the Department will publish on the CO<sub>2</sub> allowance auction website the auction clearing price and the number of CO<sub>2</sub> allowances sold in the auction.**