

1100 Air Quality Management Section

1139 Nitrogen Oxides (NO_x) Budget Trading Program

12/11/2000

1.0 Purpose

- 1.1 This regulation establishes Delaware's participation in the NO_x Budget Trading Program. The NO_x Budget Trading Program is a multi-state NO_x emissions cap and trade program, established pursuant to Title 40, Part 96 of the Code of Federal Regulations (40 CFR Part 96) and 40 CFR Part 51.121. Its purpose is to reduce emissions of the ozone precursor NO_x.
- 1.2 The goals of this regulation are to 1) improve air quality, 2) encourage NO_x reductions in Delaware, 3) help to satisfy rate of progress requirements under Section 182(c) of the CAA, and 4) help to satisfy Delaware's obligations under Section 110(a)(2)(D) of the CAA to not contribute to other states' non-attainment. The Department believes that, considering the regional nature of ozone nonattainment and the phenomena of ozone and ozone precursor transport, participation in the NO_x Budget Trading Program provides for an effective means to meet these goals, and an economical alternative to traditional command and control type regulations.
- 1.3 This regulation establishes general, administrative, permitting, monitoring, compliance, penalty and opt-in provisions, that are consistent with 40 CFR Part 96, and allow the transfer of NO_x allowances for compliance with any NO_x Budget unit that is covered by this regulation or by the regulation of any other state participating in the NO_x Budget Trading Program.
- 1.4 This regulation establishes a follow-on program to the program established by 7 **DE Admin. Code** 1137 (formerly Regulation No. 37), NO_x Budget Program, of the State of Delaware "Regulations Governing the Control of Air Pollution." The program established by Regulation No. 37 ends with the end of the 2002 NO_x control period.

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2.0 Emission Limitation

- 2.1 Each NO_x Budget unit shall hold in its compliance account or its overdraft account, as of the NO_x allowance transfer deadline of each control period, a quantity of NO_x allowances available for deduction that is equal to or greater than the total NO_x emissions from that NO_x Budget unit for that control period.
- 2.2 Each NO_x Budget unit shall be subject to the requirements of 2.1 of this regulation starting on the later of May 1, 2003 or the date the unit commences operation.

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3.0 Applicability

- 3.1 This regulation applies to:
 - 3.1.1 Any unit located within the State of Delaware that:
 - 3.1.1.1 Serves a generator with a nameplate capacity of 15 megawatts electrical (MWe), or greater; or

- 3.1.1.2 Is not a unit under 3.1.1.1 of this regulation and that has a maximum design heat input capacity of 250 million British Thermal Units per hour (MMBTU/hr), or greater; or
 - 3.1.2 Any unit located in the State of Delaware that is issued a final NO_x Budget permit under 14.0 of this regulation; or
 - 3.1.3 Any person that establishes a general account pursuant to 15.0 of this regulation.
- 3.2 Once any unit becomes a NO_x Budget unit, it shall remain subject to all of the requirements of this regulation, except as follows:
- 3.2.1 For any NO_x Budget unit that is retired, the NO_x authorized account representative may submit to the Department, with a copy to the Administrator, a statement indicating that unit is retired and that it shall comply with all of the provisions of 3.2 of this regulation.
 - 3.2.2 Upon receipt of the submission under 3.2.1 of this regulation, the Department shall amend or cancel, as applicable, the unit's NO_x Budget permit.
 - 3.2.3 Except as provided for in 3.2.7 of this regulation, an exemption from the requirements of this regulation shall be in effect on and after the date any submission is made pursuant to 3.2.1 of this regulation.
 - 3.2.4 The unit shall not emit any NO_x while the exemption is in effect.
 - 3.2.5 The NO_x authorized account representative of the unit:
 - 3.2.5.1 Shall comply with all of the requirements of this regulation concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.
 - 3.2.5.2 Shall, except as provided for in 3.2.5.3 of this regulation, comply with all of the requirements of this regulation except for the requirements of 2.0, 7.0, 8.0 and 11.0 through 15.0 of this regulation.
 - 3.2.5.3 May, at his option and provided the unit does not receive an annual allocation under Appendix A of this regulation, request that the Administrator close the NO_x Budget units compliance account and establish and transfer any remaining allowances to a new general account for the owner and operator of the NO_x Budget source. The NO_x authorized account representative for the NO_x Budget source shall become the NO_x authorized account representative for that general account, and shall comply with all of the requirements of this regulation except for the requirements of 2.0, 6.0, 7.0, 8.0, and 11.0 through 14.0 of this regulation.
 - 3.2.6 For any unit identified in 3.1.1 of this regulation that receives an annual allocation under Appendix A of this regulation, that unit shall continue to receive that allocation as provided for in 3.0 of **Appendix A** of this regulation. Any unit identified in 3.1.2 of this regulation shall not receive an allocation under 14.6 of this regulation while the exemption is in effect.
 - 3.2.7 If any unit exempted under 3.2 of this regulation is ever reactivated, upon reactivation, for the purposes of applying the requirements of 8.0 of this regulation, the unit shall be treated as a new unit that commences operation or commences commercial operation on the first date on which the unit resumes operation. Prior to commencing operations, the NO_x authorized account representative shall secure or amend, as applicable, a NO_x Budget permit.

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4.0 Definitions

The terms used in this regulation shall have the meanings set forth in 4.0 of this regulation.

“Administrator” means the Administrator of the United States Environmental Protection Agency or the Administrator’s duly authorized representative.

“Allocate or allocation” means the determination by the Department or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit.

“Allowance” means a NO_x allowance described in 5.1.2 through 5.1.4 of this regulation.

“Automated data acquisition and handling system” means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use pursuant to 8.0 of this regulation, 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 8.0 of this regulation.

“CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101549 (November 15, 1990).

“Commence commercial operation” means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

1. Except as provided in 3.2.7 of this regulation, for a unit that is a NO_x Budget unit under 3.1.1.1 of this regulation 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.

2. Except as provided in 3.2.7 or 14.0 of this regulation, for a unit that is not a NO_x Budget unit on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit shall be the unit’s date of commencement of commercial operation.

“Commence operation” means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber.

1. Except as provided in 3.2.7 of this regulation, for a unit that is a NO_x Budget unit under 3.1.1 of this regulation on the date the unit commences operation, such date shall remain the unit’s date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

2. Except as provided in 3.2.7 or 14.0 of this regulation, for a unit that is not a NO_x Budget unit on the date the unit commences operation, the date the unit becomes a NO_x Budget unit shall be the unit’s date of commencement of operation.

“Common stack” means a single flue through which emissions from two or more pieces of equipment are exhausted.

“Compliance account” means a NATS account, established by the Administrator for a NO_x Budget unit pursuant to 9.0 of this regulation, in which any allocation for the NO_x Budget unit is initially recorded and in which are held NO_x allowances available for deduction by the NO_x

Budget unit for a control period for the purpose of meeting the NO_x Budget unit's NO_x Budget emissions limitation.

“Continuous emission monitoring system (CEMS)” means the equipment required pursuant to 8.0 of this regulation used to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of NO_x emissions, expressed in pounds of NO_x per hour. The following systems are component parts included, to the extent required by 8.0 of this regulation, in a continuous emission monitoring system:

1. Flow monitor;
2. NO_x pollutant concentration monitors;
3. Diluent gas monitor (O₂ or CO₂);
4. A continuous moisture monitor; and
5. An automated data acquisition and handling system.

“Control period” means the period beginning May 1 of a year and ending on September 30 of that same year, inclusive.

“Deducted, Deduction, or Deduct NO_x Allowance” means the permanent withdrawal of NO_x allowances by the Administrator from a NATS compliance account or overdraft account, under 12.0 of this regulation, to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, quantified in accordance with 8.0 of this regulation, or for any other allowance surrender obligation of this regulation.

“Department” means the State of Delaware Department of Natural Resources and Environmental Control.

“Emissions” means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with 8.0 of this regulation.

“Excess emissions” means any tonnage of NO_x emitted by a NO_x Budget unit during a control period that exceeds that unit's NO_x Budget emissions limitation.

“General account” means a NATS account, established in accordance with 15.0 of this regulation, that is neither a compliance account nor an overdraft account.

“Generator” means a device that produces electricity.

“Heat input” means the product (in MMBTU/time) of the gross calorific value of the fuel (in MMBTU/lb) and the fuel feed rate into a combustion device (in lb of fuel/time), or as calculated by any other method approved by the Department and the Administrator, as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with 8.0 of this regulation, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

“Hold NO_x allowances or NO_x allowances held” means the NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation in a NATS account in accordance with 9.0 or 10.0 of this regulation.

“Life-of-the-unit, firm power contractual arrangement” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit’s total costs, pursuant to a contract:

1. For the life of the unit; or
2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
3. For a period equal to or greater than 25 years or 70% 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 design heat input” means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

“Monitoring system” means any monitoring system that meets the requirements of 8.0 of this regulation, including a continuous emission monitoring system, an excepted monitoring system, or an alternative monitoring system.

“Nameplate capacity” means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

“NATS” means NO_x Allowance Tracking System; the system by which the Administrator records any allocation, deduction, or transfer of any NO_x allowances under the NO_x Budget Trading Program.

“NATS account” means a compliance, overdraft, or general account in the NATS, established by the Administrator, for purposes of recording any allocation and holding, transferring, or deducting any NO_x allowances.

“NO_x allowance transfer deadline” means midnight of November 30 or, if November 30 is a weekend or federal holiday, midnight of the first business day thereafter and is the deadline by which NO_x allowances must be submitted for recordation in a NO_x Budget units compliance account or overdraft account, in order to meet the unit’s NO_x Budget emissions limitation for the control period immediately preceding such deadline.

“NO_x authorized account representative” means:

1. For a NO_x Budget source, the natural person who is authorized by the owners and operators of that source and all NO_x Budget units at that source, in accordance with 6.0 of this regulation, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program.

2. For a general account, the natural person who is authorized, in accordance with 15.0 of this regulation, to transfer or otherwise dispose of NO_x allowances held in the general account.

3. Except where used in 6.0 and 15.0 of this regulation, the term NO_x authorized account representative shall be construed to include any alternate NO_x authorized account representative.

“NO_x Budget emissions limitation” means the limitation described in 2.1 of this regulation.

“NO_x Budget permit” means the permit described in 7.0 and 14.0 of this regulation.

“NO_x Budget source” means a source that includes one or more NO_x Budget unit or units.

“NO_x Budget Trading Program” means the program described in 1.1 of this regulation.

“NO_x Budget unit” means any unit described in 3.1.1 or 3.1.2 of this regulation.

“Operator” means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or a unit for which an application for a NO_x Budget permit under 14.0 of this regulation is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

“Opt-in unit” means a unit described in 3.1.2 of this regulation.

“Overdraft account” means the NATS account, established by the Administrator under 9.1.1 of this regulation, for each NO_x Budget source where there are two or more NO_x Budget units.

“Owner” means any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget permit under 14.0 of this regulation is submitted and not denied or withdrawn; or

2. Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget permit under 14.0 of this regulation is submitted and not denied or withdrawn; or

3. Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget permit under 14.0 of this regulation is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget permit under 14.0 of this regulation is submitted and not denied or withdrawn; or

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

“Receive or receipt of” means, when referring to the Department or the Administrator, 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 or the Administrator in the regular course of business.

“Recordation, record, or recorded” means, with regard to any NO_x allowance, the movement of that NO_x allowance by the Administrator from one NATS account to another, for purposes of allocation, transfer, or deduction.

“Source” means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA.

“State trading program budget” means the total number of NO_x tons apportioned to all NO_x Budget units in a given State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

“Submit” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;
2. By United States Postal Service; or
3. By other means of dispatch or transmission or 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.

“Ton or tonnage” means any “short ton” (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, 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 8.0 of this regulation, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

“Unit” means any of the following fossil fuel-fired combustion operations: boiler, indirect heat exchanger, combustion turbine, or combined cycle system. For the purposes of this definition:

1. Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.
2. Fossil fuel-fired means,
 - A. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a BTU basis during any year starting in 1990 or, if a unit had no heat input starting in 1990, during the last year of operation of the unit prior to 1990; or
 - B. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% of the annual heat input on a BTU basis during any year; provided that the unit shall be “fossil fuel-fired” as of the date, during such year, on which the unit begins combusting fossil fuel.

3. 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.

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

5. Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, 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.

6. Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

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5.0 General Provisions

5.1 Allocations and NO_x Allowances.

5.1.1 An allocation may be made only by the Department in accordance with **Appendix A**, **Appendix B**, and 14.6 of this regulation, or by the Administrator as provided for in **Appendix A** of this regulation.

5.1.2 A NO_x allowance is a limited authorization, by the Department and the Administrator, to emit up to one ton of NO_x during the control period of a specified year or of any year thereafter, in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under 3.2 of this regulation, and no provision of law shall be construed to limit the authority of the United States or the State of Delaware to terminate or limit such authorization.

5.1.3 NO_x allowances shall be held in, deducted from, or transferred among NATS accounts in accordance with 9.0, 10.0, 12.0 and 13.0 of this regulation. Any NO_x allowance that is held in a NATS account shall remain in such NATS account unless and until that NO_x allowance is deducted, transferred, or terminated.

5.1.4 A NO_x allowance does not constitute a property right.

5.2 Record Keeping. Except as provided for below, the NO_x authorized account representative of each NO_x Budget source shall keep on site at that source each of the following documents for, at a minimum, a period of five years from the date that document is created. This period of time may be extended for cause at any time prior to the end of that five-year period upon written notification from either the Department or the Administrator.

5.2.1 The account certificate of representation submitted pursuant to 6.0 of this regulation, and all documents that demonstrate the truth of the statements in that account certificate of representation. The certificate and documents shall be retained on site at the source beyond that five-year period until they are superseded by the submission of a new account certificate of representation.

- 5.2.2 The NO_x Budget permit application submitted pursuant to 7.0 of this regulation, and all documents used to complete that application. The application and documents shall be retained on site at the source beyond that five-year period until they are superseded by the submission of a new application.
- 5.2.3 All emissions monitoring information pursuant to 8.0 of this regulation, except that to the extent 8.0 of this regulation provides for a three-year period, that three-year period shall apply.
- 5.2.4 Copies of any report, compliance certification, and any other submission or record made or required under the NO_x Budget Trading Program.
- 5.2.5 Records demonstrating that any unit exempted under 3.2 of this regulation is retired. The owner or owners and operator or operators of that unit bears the burden of proof that the unit is retired.
- 5.3 Computation of Time. Unless otherwise stated:
- 5.3.1 Any time period scheduled to begin on the occurrence of an act or event shall begin on the day that act or event occurs.
- 5.3.2 Any time period scheduled to begin before the occurrence of an act or event shall begin not later than the day before that act or event occurs.
- 5.3.3 If the final day of any time period falls on a weekend or a State of Delaware or Federal holiday, that time period shall be extended to the next business day.
- 5.4 Liability.
- 5.4.1 Each NO_x Budget source and each NO_x Budget unit shall comply with all of the requirements of the NO_x Budget Trading Program and any applicable NO_x Budget permit.
- 5.4.2 No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that revision takes effect.
- 5.4.3
- 5.4.3.1 Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of that NO_x Budget source) shall also apply to the owners and operators of that source and of the NO_x Budget units at that source.
- 5.4.3.2 Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of that NO_x Budget unit) shall also apply to the owners and operators of that unit.
- 5.4.3.3 Except with regard to the requirements applicable to units with a common stack under 8.0 of this regulation, the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

- 5.4.4 No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under 3.2 of this regulation shall be construed to exempt or exclude the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other applicable State or Federal requirement.
- 5.4.5 Any person who knowingly violates any requirement or prohibition of the NO_x Budget Trading Program, a NO_x Budget permit, or an exemption under 3.2 of this regulation shall be subject to enforcement pursuant to applicable State or Federal law.
- 5.4.6 Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

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6.0 NO_x Authorized Account Representative for NO_x Budget Sources

- 6.1 On or before the later of November 1, 2001 or the date 18 months before the date on which any NO_x Budget unit commences operation, the NO_x authorized account representative and any alternate NO_x authorized account representative of any NO_x Budget source shall submit to the Administrator, with a copy to the Department, a complete account certificate of representation. Such account certificate of representation:
- 6.1.1 Shall designate one and only one NO_x authorized account representative, and may designate one and only one alternate NO_x authorized account representative. Such NO_x authorized account representative and any alternate NO_x authorized account representative shall be selected by an agreement between the owners and operators of the source and all NO_x Budget units at that source, binding on such owners and operators. Such agreement shall include a procedure for authorizing any alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.
- 6.1.2 Shall include all of the following information in a format specified by the Administrator:
- 6.1.2.1 Identification of the NO_x Budget source and each NO_x Budget unit at that source for which the account certificate of representation is submitted.
- 6.1.2.2 The name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.
- 6.1.2.3 A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.
- 6.1.2.4 The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order

issued to me by the Department, the Administrator, or a court regarding the source or unit.”

- 6.1.2.5 The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative, and the date~~(s)~~ or dates the account certificate of representation was signed.
- 6.1.3 Shall not include, unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation. If submitted, neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents.
- 6.2 Upon receipt by the Administrator of a complete account certificate of representation under 6.1 of this regulation:
- 6.2.1 The NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x Budget source represented and each NO_x Budget unit at that source in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the Department, the Administrator, or a court regarding the source or unit.
- 6.2.2 Any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.
- 6.2.3 The Department and the Administrator shall rely on the account certificate of representation submitted pursuant to 6.1 of this regulation unless and until the Administrator receives a superseding complete account certificate of representation changing the NO_x authorized account representative or alternate NO_x authorized account representative. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative or alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and alternate NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.
- 6.2.4 Except as provided in 6.2.3 of this regulation, no objection or other communication submitted to the Department or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or the alternate NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the alternate NO_x authorized account representative, or the finality of any decision or order by the Department or the Administrator under the NO_x Budget Trading Program.
- 6.2.5 Neither the Department nor the Administrator shall adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative or the alternate NO_x authorized account representative.

6.3 Changes in the owners and operators

6.3.1 Within 30 days following any change in the owner or owners and operator or operators of a NO_x Budget source or a NO_x Budget unit at that source, including the addition of a new owner or operator, the NO_x authorized account representative or the alternate NO_x authorized account representative shall submit to the Administrator, with a copy to the Department, a revised account certificate of representation amending the list of owners and operators to include that change.

6.3.2 In the event a new owner or operator of a NO_x Budget source or a NO_x Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inaction's of the Department or the Administrator, as if the new owner or operator were included in such list.

6.4 Submissions/Certifications

6.4.1 The NO_x authorized account representative or the alternate NO_x authorized account representative shall sign and certify all submissions under the NO_x Budget trading program with the following certification statement: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

6.4.2 The Department and the Administrator shall accept or act on any submission made under the NO_x Budget Trading program only if that submission has been made, signed, and certified in accordance with 6.4.1 of this regulation.

12/11/2000

7.0 Permits

7.1 Except as provided for in 3.2 of this regulation, on and after May 1, 2002 each NO_x Budget unit shall be covered by a NO_x Budget permit. Such NO_x Budget permit shall be a complete and segregable portion of, and made federally enforceable by, the permit issued pursuant to:

7.1.1 For any NO_x Budget unit required to be covered by a **7 DE Admin. Code 1130** permit, **7 DE Admin Code 1130** of the State of Delaware "Regulations Governing the Control of Air Pollution."

7.1.2 For any NO_x Budget unit not required to be covered by a **7 DE Admin. Code 1130** permit, **7 DE Admin. Code 1102** of the State of Delaware "Regulations Governing the Control of Air Pollution."

- 7.2 On or before the later of November 1, 2001, or the date 18 months before the date on which any NO_x Budget unit commences operation, the NO_x authorized account representative of each NO_x Budget source shall submit to the Department:
- 7.2.1 A complete NO_x Budget permit application that includes, at a minimum, all of the following information:
- 7.2.1.1 Identification of the NO_x Budget source, including the plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable;
- 7.2.1.2 Identification of each NO_x Budget unit at that NO_x Budget source; and
- 7.2.1.3 Identification of each applicable requirement of this regulation, to include the requirements of 2.1, 5.1.2, 5.1.3, 5.2, 5.4, 6.4, 8.2, 8.3 and 10.0 of this regulation.
- 7.2.2 In a timely manner, any supplemental information that the Department determines is necessary in order to review a NO_x Budget permit application or issue or deny any NO_x Budget permit or permits.
- 7.3 Each NO_x Budget permit issued by the Department:
- 7.3.1 Shall specify the information submitted under 7.2.1 of this regulation, as approved by the Department.
- 7.3.2 Shall be deemed to incorporate automatically the definitions of terms under 4.0 of this regulation. Upon recordation by the Administrator, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located shall be deemed to amend automatically, and become a part of the associated NO_x Budget permit by operation of law without any further review.
- 7.4 Any initial, revised, or renewed NO_x Budget permit shall become effective upon issuance by the Department of the corresponding 7 **DE Admin. Code** 1102 or 7 **DE Admin. Code** 1130 permit, as applicable, that administers that NO_x Budget permit.

12/11/2000

8.0 Monitoring and Reporting

- 8.1 The emissions measurements recorded and reported in accordance with 8.0 of this regulation shall be used to determine compliance by any NO_x Budget unit with its NO_x Budget emissions limitation.
- 8.2 Each NO_x Budget unit shall:
- 8.2.1 Comply with all of the requirements of Subpart H of 40 CFR Part 75 (7/1/99 edition), and all of the requirements of this regulation.
- 8.2.2 Monitor and record heat input at the unit level utilizing the procedures set forth in 40 CFR Part 75 (7/1/1999 edition).
- 8.3 For the purpose of complying with the requirements of this regulation and Subpart H of 40 CFR Part 75, the definitions in 4.0 of this regulation and in 40 CFR 72.2 (7/1/99 edition) shall apply, except the terms "affected unit," "designated representative," and "continuous emission

monitoring system” in 40 CFR Part 75 shall be replaced with “NO_x Budget unit,” “NO_x authorized account representative,” and “continuous emission monitoring system,” respectively, as defined in 4.0 of this regulation.

- 8.4 The compliance deadlines referred to in 40 CFR Part 75.70(b) shall be as follows:
- 8.4.1 Monitoring systems shall be installed and certification tests shall be completed, pursuant to the requirements of Subpart H of 40 CFR Part 75, not later than:
- 8.4.1.1 For any NO_x Budget unit identified in 3.1.1 of this regulation that commences operation before January 1, 2002, May 1, 2002.
- 8.4.1.2 For any NO_x Budget unit not covered by 8.4.1.1 of this regulation, the later of the following dates:
- 8.4.1.2.1 May 1, 2002; or
- 8.4.1.2.2 The earlier of:
- 8.4.1.2.2.1 180 days after the date on which that unit commences operation, or
- 8.4.1.2.2.2 For any unit identified in 3.1.1.1 of this regulation, 90 days after the date on which that unit commences commercial operation.
- 8.4.1.2.3 For any NO_x Budget unit that reports on a control season basis under 40 CFR 75.74(b)(2), where the applicable deadline under 8.4.1.2.2 of this regulation does not occur during a control period, May 1 immediately following the date determined in accordance with 8.4.1.2.2 of this regulation.
- 8.4.2 For any NO_x Budget unit with a new stack or flue for which construction is completed after the applicable deadline under 8.4.1 or 14.3 of this regulation:
- 8.4.2.1 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue, or
- 8.4.2.2 If that unit reports on a control season basis under 40 CFR 75.74(b)(2) and the applicable deadline under 8.4.2.1 of this regulation does not occur during the control period, May 1 immediately following the applicable deadline in 8.4.2.1 of this regulation.
- 8.4.3 Data shall be recorded and reported on and after the date specified in 8.4.1 of this regulation. The provisions of 40 CFR 75.70(g), concerning the reporting of data prior to initial certification, shall apply from the date and hour that any unit starts operating until all required certification tests are successfully completed.
- 8.5 The requirements of 40 CFR Part 75.70(d)(1), concerning initial certification and recertification procedures, shall be expanded to include the following additional requirements:
- 8.5.1 If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17 of this chapter, the NO_x authorized account representative shall resubmit the petition to the Administrator under 40 CFR 75.70(h)(1) and (2) to determine if the approval applies under the NO_x Budget Trading Program.

- 8.5.2 The NO_x authorized account representative of each unit applying to monitor using an alternative monitoring system under Subpart E of 40 CFR Part 75 shall apply for certification to the Department prior to use of the system under the NO_x Budget Trading Program. The NO_x authorized account representative shall comply with the notification and application requirements for certification, or for recertification following a replacement, modification or change, according to the procedures in 8.6 of this regulation.
- 8.6 Except as otherwise specified in 8.7 of this regulation (pertaining to the low mass emissions excepted methodology under 40 CFR 75.19), the initial certification and recertification procedures referred to in 40 CFR Part 75.70(d)(2) shall be as follows.
- 8.6.1 Each monitoring system required by Subpart H of 40 CFR Part 75 (which includes the automated data acquisition and handling system) shall complete all of the initial certification testing required under 40 CFR 75.20 not later than the deadlines specified in 8.4 of this regulation. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this regulation in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.
- 8.6.2 Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emission monitoring system according to 40 CFR 75.20(b). Examples of changes that require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or the changing of flow-rate-monitor polynomial coefficients.
- 8.6.3 Certification approval process for initial certifications and recertification.
- 8.6.3.1 The NO_x authorized account representative shall submit to the Department, with a copy to the EPA Region III Office, a written notice of the dates of certification testing in accordance with the requirements of 40 CFR Part 75.61. If the unit is not subject to an Acid Rain emissions limitation, the notification is required to be sent only to the Department.
- 8.6.3.2 The NO_x authorized account representative shall submit to the Department not later than 45 days after completing all initial certification or recertification tests a complete certification application for each monitoring system required under Subpart H of 40 CFR Part 75. Such certification application shall be considered complete if it includes all of the information specified in 40 CFR 75.63. Any alternative monitoring system under Subpart E of 40 CFR Part 75 shall also be subject to the procedures of 40 CFR 75.20(f).
- 8.6.3.3 Except for units using the low mass emission excepted methodology under 40 CFR 75.19, a monitor shall be provisionally certified upon successful completion of the certification procedures of 8.6.3.1 and 8.6.3.2 of this regulation. A provisionally certified monitor may be used under the NO_x Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under 8.6.3.2 of this regulation. 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 of certification status under 8.6.3.4.3 of this regulation.

- 8.6.3.4 The Department shall issue a written notice of approval or disapproval of the certification application to the NO_x authorized account representative within 120 days of receipt of the complete certification application under 8.6.3.2 of this regulation. In the event the Department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and that is included in the certification application shall be deemed certified for use under the NO_x Budget Trading Program.
- 8.6.3.4.1 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 shall issue a written notice of approval of the certification application within 120 days of receipt.
- 8.6.3.4.2 If the certification application is not complete, then the Department shall issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under 8.6.3.4.3 of this regulation.
- 8.6.3.4.3 If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this regulation, or if the certification application is incomplete and the requirement for disapproval under 8.6.3.4.2 of this regulation has been met, the Department may issue a written notice of disapproval of the certification application.
- 8.6.3.5 If the Department issues a notice of disapproval of a certification application under either 8.6.3.4.3 of this regulation or a notice of disapproval of certification status under 8.10 of this regulation, then the following shall apply to each monitoring system or component thereof which is disapproved for initial certification:
- 8.6.3.5.1 Upon issuance of such notice of disapproval, the provisional certification is invalidated 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.
- 8.6.3.5.2 The owner or operator shall substitute the following values for any hour (or fraction of an hour) during which the unit combusts any fuel 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).
- 8.6.3.5.2.1 For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit.

Maximum potential NO_x emission rate means the emission rate of NO_x (in lb/MMBTU) calculated in accordance with section 3 of Appendix F of 40 CFR

Part 75, using the maximum potential NO_x concentration as defined in section 2 of appendix A of 40 CFR Part 75, and either the maximum O₂ concentration (in % O₂) or the minimum CO₂ concentration (in % CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

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 the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum CO₂ concentration (in % CO₂) or the minimum O₂ concentration (in % O₂).

8.6.3.5.2.2 For units intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75.

8.6.3.5.3 The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with 8.6.3.1 and 8.6.3.2 of this regulation; and

8.6.3.5.4 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. A Unit operating day means a calendar day in which a unit combusts any fuel.

8.7 The initial certification and recertification procedures referred to in 40 CFR Part 75.70(d)(2) for any gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19, and not subject to an acid rain limitation, shall be those applicable certification and recertification requirements of 40 CFR 75.19 and 8.6 of this regulation, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program, as of the following dates:

8.7.1 For a unit that does not have monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under 40 CFR 75.19 for that unit, starting on the date of such submission until the completion of the period for the Department's review.

8.7.2 For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under 40 CFR 75.19 for that unit and that reports data on an annual basis under 40 CFR 75.74(b)(2), starting January 1 of the year after the year of such submission until the completion of the period for the Department's review.

8.7.3 For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x Authorized Account Representative submits the certification application under 40 CFR 75.19 for that unit and that reports on a control season basis under 40 CFR 75.74(b)(2), starting May 1 of the control period after the year of such submission until the completion of the period for the Administrator's review.

- 8.8 Approval by the Department is required for approval of any alternative requirement under 40 CFR part 75.70(h)(3)(ii).
- 8.9 The NO_x authorized account representative shall submit quarterly reports required by 40 CFR Part 75.73(f) beginning with:
- 8.9.1 For any unit that commences operation prior to May 1, 2002, the earlier of the calendar quarter that includes the date of initial provisional certification under 8.6.3.3 of this regulation or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002.
- 8.9.2 Except as provided for in 8.9.3 of this regulation, for any unit that commenced operation on or after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.
- 8.9.3 For any unit that is subject to ozone season monitoring requirements under 40 CFR 75.74(b)(2), and that commenced operation after September 30, 2002, and that did not commence operations during a control period, the earlier of the calendar quarter that includes the date of initial provisional certification under 8.6.3.3 of this regulation or, if the certification tests are not completed by May 1 immediately following the date that the unit commenced operation, May 1 immediately following the date the unit commenced operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 immediately following the date that the unit commenced operation.
- 8.10 Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 40 CFR 75.70(d) or any other applicable provision 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 may issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in 40 CFR Part 75.70(d) for each disapproved system.

12/11/2000

9.0 NATS

- 9.1 Establishment of NATS Accounts.
- 9.1.1 Upon receipt of a complete account certificate of representation pursuant to 6.1 of this regulation, the Administrator shall establish a compliance account for each NO_x Budget unit identified in that account certificate of representation, and an overdraft account for each such NO_x Budget source that includes two or more NO_x Budget units.

9.1.2 Upon receipt of a complete application to establish a general account pursuant to 15.0 of this regulation, the Administrator shall establish a general account for the person or persons for whom the application is submitted.

9.1.3 The Administrator shall assign a unique identifying account number to each account established under 9.1.1 or 9.1.2 of this regulation, and a unique identifying number to each associated NO_x authorized account representative.

9.2 Recordation of Allocations and Deductions.

9.2.1 The Administrator shall record allocations for the 2003, 2004, and 2005 control periods, pursuant to 4.1 of **Appendix A** and 3.0 of **Appendix B** of this regulation. The Administrator shall record any allocations for the 2003 control period pursuant to 14.6.2 of this regulation.

9.2.2 Each year, starting in 2003, the Administrator shall:

9.2.2.1 Record in the appropriate compliance account or overdraft account all deductions made pursuant to 12.0 and 13.0 of this regulation.

9.2.2.2 After recording any deductions pursuant to 9.2.2.1 of this regulation:

9.2.2.2.1 Record allocations pursuant to 4.2 of **Appendix A** of this regulation.

9.2.2.2.2 Record allocations pursuant to 14.6.2 of this regulation.

9.2.3 When recording any allocation, the Administrator shall assign to the corresponding NO_x allowance a unique identification serial number that includes digits identifying the year for which that NO_x allowance is allocated.

9.3 Banking.

9.3.1 After recording any deductions pursuant to 9.2.2.1 of this regulation, the Administrator shall designate, as a "banked" NO_x allowance, any NO_x allowance that was eligible for deduction and that remains in any compliance account, overdraft account, or general account

9.3.2 Each year, starting in 2004, after completing the designation of banked NO_x allowances under 9.3.1 of this regulation and before May 1 of that year, the Administrator shall determine the extent to which any banked NO_x allowance may be used for compliance in the impending control period, as follows:

9.3.2.1 The Administrator shall determine the total number of banked NO_x allowances held in all of the NO_x Budget Trading program's compliance accounts, overdraft accounts, and general accounts.

9.3.2.2 The Administrator shall determine the sum of the State trading program budgets for the impending control period of all of the States participating in the NO_x Budget trading program.

9.3.2.3 The Administrator shall determine the result of dividing the number determined under 9.3.2.1 of this regulation by the number determined under 9.3.2.2 of this regulation.

- 9.3.3 If the number determined under 9.3.2.3 of this regulation is equal to or less than 0.10, then any banked NO_x allowance may be deducted for compliance in accordance with 12.0 and 13.0 of this regulation.
- 9.3.4 If the number determined under 9.3.2.3 of this regulation is greater than 0.10, then:
- 9.3.4.1 The Administrator shall determine the following ratio: 0.10 multiplied by the number determined under 9.3.2.2 of this regulation and divided by the number determined under 9.3.2.1 of this regulation.
- 9.3.4.2 The Administrator shall, in implementing the provisions of 12.2 and 13.1 of this regulation for the impending control period, multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio calculated under 9.3.4.1 of this regulation. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with 12.0 and 13.0 of this regulation. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with 12.0 and 13.0 of this regulation, except that, if any such NO_x allowance is deducted, two such NO_x allowances shall be deducted for each one NO_x allowance required under 12.0 and 13.0 of this regulation.
- 9.4 The Administrator may, at his/her sole discretion and on his/her own motion, correct any error in any NATS account. Within 10 business days of making any such correction, the Administrator shall notify the NO_x authorized account representative of the affected account of any correction made.

12/11/2000

10.0 NO_x Allowance Transfers

- 10.1 The NO_x authorized account representative seeking recordation of a NO_x allowance transfer shall submit to the Administrator a transfer request that includes all of the following information in a format specified by the Administrator:
- 10.1.1 The account number of both the transferor and transferee accounts;
- 10.1.2 The serial number of each NO_x allowance to be transferred; and
- 10.1.3 The printed name and signature of the NO_x authorized account representative of the transferor account, and the date the transfer request was signed.
- 10.2 Provided that the transfer request meets the requirements of 10.1 of this regulation, and the transferor account holds each NO_x allowance identified by serial number in the transfer request, the Administrator shall record the NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request.
- 10.2.1 Any NO_x allowance transfer request that is submitted for recordation after a NO_x allowance transfer deadline, and that includes any NO_x allowance that was allocated for a control period prior to or the same as the control period associated with that NO_x allowance transfer deadline, shall be recorded after the recordation of allocations under 9.2.2 of this regulation for that control period.
- 10.2.2 Any transfer request not identified in 10.2.1 of this regulation shall be recorded within five business days of receiving such request.

10.2.3 Within five business days of recordation of any NO_x allowance transfer, the Administrator shall notify the NO_x authorized account representatives of both accounts subject to the transfer that the transfer was recorded.

10.3 Where a NO_x allowance transfer request fails to meet the requirements of 10.2 of this regulation, the Administrator shall not record that transfer.

10.3.1 Within 10 business days of receipt of such a request, the Administrator shall notify the NO_x authorized account representatives of both the transferor and transferee accounts of the reason or reasons why the transfer was not recorded.

10.3.2 Nothing in this regulation shall preclude the correction and resubmission of a NO_x allowance transfer request following notification under 10.3.1 of this regulation.

12/11/2000

11.0 Compliance Certification

11.1 Not later than November 30 of each year, starting in 2003, the NO_x authorized account representative of each NO_x Budget source shall submit to the Department and the Administrator a compliance certification report that covers the control period for that year. Such report shall include all of the following information in a format specified by the Administrator:

11.1.1 Identification of the NO_x Budget source and each NO_x Budget unit at that source.

11.1.2 At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with 8.0 of this regulation, the percentage of the number of tons of NO_x emissions from the common stack to be attributed to each unit, for application under 12.2.2.1 of this regulation.

11.1.3 At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each NO_x Budget unit's compliance account, for application under 12.2.2.1 or 13.1.1 of this regulation.

11.1.4 Certification by the NO_x authorized account representative of, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to that unit, including:

11.1.4.1 Whether the unit was operated in compliance with its NO_x Budget emissions limitation;

11.1.4.2 Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with 8.0 of this regulation;

11.1.4.3 Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common stack, 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 8.0 of this regulation. If conditional data were reported, the NO_x authorized account representative shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmission's have been made;

11.1.4.4 Whether the facts that form the basis for certification under 8.0 of this regulation of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under 8.0 of this regulation, if any, has changed; and

11.1.4.5 If a change is required to be reported under 11.1.4.4 of this regulation, specify the nature of the change, the reason for the change, when the change occurred, and how the 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.

11.2 The Department or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

11.3 The Administrator may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under 11.2 of this regulation.

12/11/2000

12.0 End-of-Season Reconciliation

12.1 A NO_x allowance is available to be deducted for compliance with a unit's NO_x Budget emissions limitation for a particular control period only if that NO_x allowance:

12.1.1 Was allocated for that control period or for a control period in a prior year; and

12.1.2 Is held in that unit's compliance account or its associated overdraft account, as of the NO_x allowance transfer deadline for that control period; or

12.1.3 Is transferred into that unit's compliance account or its associated overdraft account by a NO_x allowance transfer request that was correctly submitted for recordation under 10.0 of this regulation on or before the NO_x allowance transfer deadline associated with that control period.

12.2 For each control period, following the recordation of NO_x Allowance transfer requests that were submitted for recordation under 10.0 of this regulation on or before the associated NO_x allowance transfer deadline, the Administrator shall deduct NO_x allowances that meet the requirements of 12.1 of this regulation from each NO_x Budget unit's account or accounts:

12.2.1 Until the number of NO_x allowances deducted equals the number of tons of NO_x emissions from that unit for that control period.

12.2.2 In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned under 8.0 of this regulation, the Administrator shall deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals:

- 12.2.2.1 Where the NO_x authorized account representative identified a percentage pursuant to 11.1.2 of this regulation, that percentage of the number of tons of NO_x emissions from the common stack, or,
- 12.2.2.2 If no percentage is identified, an equal percentage for each such unit.
- 12.2.3 Where there are not sufficient NO_x allowances available under 12.2.1 and 12.2.2 of this regulation, until no more NO_x allowances that meet the requirements of 12.1 of this regulation remain available for deduction.
- 12.3 The particular allowances that the Administrator shall delete shall be:
- 12.3.1 Where the NO_x authorized account representative identified by serial number the NO_x allowances to be deducted pursuant to 11.1.3 of this regulation, the Administrator shall deduct those particular allowances.
- 12.3.2 In the absence of an identification or in the case of a partial identification of NO_x allowances by serial number, the Administrator shall deduct NO_x allowances:
- 12.3.2.1 From the compliance account on a first-in, first-out (FIFO) accounting basis in the following order:
- 12.3.2.1.1 Those NO_x allowances that were allocated for that control period to that unit;
- 12.3.2.1.2 Those NO_x allowances that were allocated for that control period to any unit and transferred and recorded in that unit's account, in order of their date of recordation;
- 12.3.2.1.3 Those NO_x allowances that were allocated for a prior control period to that unit; and
- 12.3.2.1.4 Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in that unit's account, in order of their date of recordation.
- 12.3.2.2 Only after all NO_x allowances that meet the requirements of 12.1 of this regulation have been deducted from the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator shall begin with the NO_x Budget unit having the compliance account with the lowest NATS account number and end with the NO_x Budget unit having the compliance account with the highest NATS account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

12/11/2000

13.0 Failure to Meet Compliance Requirements

- 13.1 For each unit under 12.2.3 of this regulation, the Administrator shall deduct from that unit's compliance account or the associated overdraft account a number of NO_x allowances equal to three times the number of that unit's excess emissions.

- 13.1.1 Where the NO_x authorized account representative identified by serial number the NO_x allowances to be deducted pursuant to 11.1.3 of this regulation, the Administrator shall deduct those particular allowances.
- 13.1.2 In the absence of an identification by serial number, or in the case of a partial identification, the Administrator shall deduct NO_x allowances that were allocated for any control period after the control period in which the unit has excess emissions, until the requirement of 13.1 of this regulation is satisfied.
- 13.1.3 If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator shall deduct NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account, until the requirement of 13.1 of this regulation is satisfied.
- 13.2 Any deduction required under 13.1 of this regulation shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law or regulation. The following guidelines shall be followed in assessing fines, penalties or other obligations:
- 13.2.1 For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.
- 13.2.2 Each ton of excess emissions is a separate violation.

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14.0 Individual Unit Opt-Ins

- 14.1 Any unit located in Delaware that meets all of the following provisions may voluntarily opt into the NO_x Budget Trading program by submitting to the Department an opt-in application.
- 14.1.1 The unit is not a NO_x Budget unit identified in 3.1.1 of this regulation; and
- 14.1.2 The unit is not exempted under 3.2 of this regulation; and
- 14.1.3 The unit can meet the emissions monitoring and reporting requirements of 8.0 of this regulation; and
- 14.1.4 The unit has documented heat input for more than 876 hours in the six months immediately preceding the submission of an application for an initial NO_x Budget permit under 14.2 of this regulation.
- 14.2 Each unit identified in 14.1 of this regulation shall submit:
- 14.2.1 To the Department and the Administrator a complete account certificate of representation that meets all of the requirements of 6.0 of this regulation.
- 14.2.2 To the Department a complete NO_x Budget permit application that meets all of the requirements of 7.2 of this regulation, with the following additional certification statement or statements made by the NO_x authorized account representative:
- 14.2.2.1 "I certify that each unit for which this permit application is submitted under 14.0 of 7 DE Admin. Code 1139 is not a NO_x Budget unit under 3.1.1 of 7 DE Admin.

Code 1139, is not covered by a retired unit exemption under 3.2 of 7 **DE Admin. Code 1139** that is in effect”

14.2.2.2 For any application for an initial NO_x Budget permit, “I certify that the unit meets the requirements of 14.1.4 of 7 **DE Admin. Code 1139**.”

14.2.3 To the Department a monitoring plan in accordance with 8.0 of this regulation.

14.3 The Department shall determine, on an interim basis, the sufficiency of the monitoring plan submitted pursuant to 14.2.3 of this regulation. A monitoring plan is sufficient, for purposes of this interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with 8.0 of this regulation. A determination of sufficiency shall not be construed as acceptance or approval of the unit’s monitoring plan.

14.3.1 If the Department determines that the unit’s monitoring plan is sufficient the NO_x authorized account representative shall:

14.3.1.1 Install and certify all monitoring systems required under 8.0 of this regulation, pursuant to 8.0 of this regulation.

14.3.1.2 Monitor and report the NO_x emissions rate and the heat input of the unit in accordance with 8.0 of this regulation for one full control period during which the % monitoring data availability is not less than 90% and during which the unit is in full compliance with all applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements of the prior sentence, the unit shall be treated as a “NO_x Budget unit” prior to issuance of a NO_x Budget permit covering the unit.

14.3.1.3 Based on the information monitored and reported under 14.3.1.2 of this regulation, submit to the Department the unit’s baseline heat input calculated as the unit’s total heat input (in MMBTU) for the control period, and the unit’s baseline NO_x emissions rate calculated as the unit’s total NO_x mass emissions (in lb) for the control period divided by the unit’s baseline heat input.

14.3.2 If the Department determines that the unit’s monitoring plan is not sufficient the Department shall disapprove the opt-in application.

14.4 After receipt of the baseline heat input and the baseline NO_x emissions rate for the unit under 14.3.1.3 of this regulation:

14.4.1 The Department shall issue a draft NO_x Budget permit on the NO_x authorized account representative of the unit. Such permit shall meet all of the requirements of 7.3 of this regulation.

14.4.2 Within 20 days after the issuance of the draft NO_x Budget permit, the NO_x authorized account representative of the unit shall either withdrawal its application or submit to the Department a confirmation of the intention to opt in the unit. The Department shall treat any failure to make a timely submission as a withdrawal of the NO_x Budget permit application.

14.4.3 For units where the NO_x authorized account representative confirms the intention to opt in the unit, and after considering any comments received on the draft permit, the Department shall issue a final NO_x Budget permit pursuant to 7 **DE Admin. Code 1102** or 7 **DE**

Admin. Code 1130, as applicable. The unit shall be a NO_x Budget unit upon issuance of the NO_x Budget permit, and shall be subject to all of the requirements of this regulation.

- 14.5 Notwithstanding 14.1 through 14.4 of this regulation, at any time before the issuance of a final NO_x Budget permit:
- 14.5.1 The NO_x Budget Opt-in application may be withdrawn.
- 14.5.2 If the Department determines that the unit does not qualify as an Opt-in unit, the Department shall deny the request to opt-in to the NO_x Budget Trading Program.
- 14.6 Allocations to opt-in units.
- 14.6.1 Under no circumstances shall any allocation to any unit under 14.6 of this regulation necessitate adjustments to the allocation to any other NO_x Budget Unit.
- 14.6.2 By April 1 immediately before the first control period for which any NO_x Budget permit becomes effective, and April 1 of each year thereafter, the Department shall submit to the Administrator an allocation for the next control period in accordance with 14.6.3 of this regulation.
- 14.6.3 Except as provided for in 3.2.6 of this regulation (pertaining to retired units), each Opt-in unit shall receive an annual allocation calculated as follows:
- 14.6.3.1 The Department shall determine the heat input (in MMBTU) as the lesser of:
- 14.6.3.1.1 The Opt-in unit's baseline heat input determined pursuant to 14.3.1.2 of this regulation; or
- 14.6.3.1.2 The Opt-in unit's heat input for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated, as determined in accordance with 8.0 of this regulation.
- 14.6.3.2 The Department shall allocate NO_x allowances to the Opt-in unit in an amount equaling the heat input (in MMBTU) determined under 14.6.3.1 of this regulation multiplied by the lesser of:
- 14.6.3.2.1 The Opt-in unit's baseline NO_x emissions rate (in lb/MMBTU) calculated pursuant to 14.3.1.2 of this regulation; or
- 14.6.3.2.2 The lowest NO_x emissions limitation (in terms of lb/MMBTU) that is applicable during the control period to the Opt-in unit under State or Federal law or regulation, regardless of the averaging period to which the emissions limitation applies.
- 14.7 In the event that a Opt-in unit becomes a NO_x Budget unit under 3.1.1 of this regulation due to modification, reconstruction, or any other reason:
- 14.7.1 The NO_x authorized account representative shall, not later than 30 days after such change in the Opt-in unit's regulatory status, notify in writing the Department and the Administrator of such change in the Opt-in unit's regulatory status. This provision is in addition to, and does not exempt or exclude any other State or Federal requirement, including any requirement to secure or amend any construction or operation permit under 7 **DE Admin. Code** 1102, 1125, or 1130 of the State of Delaware "Regulations Governing the Control of Air Pollution."

14.7.2 The Administrator shall deduct from the NO_x Budget unit's compliance account, or the associated overdraft account, NO_x allowances equal in number to and allocated for the same or a prior control period as:

- 14.7.2.1 Any NO_x allowances allocated to the NO_x Budget unit under 14.7 of this regulation for any control period after the last control period during which the unit's NO_x Budget permit was effective; and
- 14.7.2.2 If the effective date the NO_x Budget unit becomes subject to 14.7 of this regulation is during a control period, the NO_x allowances allocated to the NO_x Budget unit under 14.6 of this regulation for that control period multiplied by the ratio of the number of days remaining in the control period, starting with the date the NO_x Budget unit becomes subject to 14.7 of this regulation, divided by 153.
- 14.7.2.3 If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator shall deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

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15.0 General Accounts

15.1 Any person may apply to open a general account for the purpose of holding and transferring NO_x allowances by submitting to the Administrator an application to establish a general account. Such application:

15.1.1 Shall designate one and only one NO_x authorized account representative, and may designate one and only one alternate NO_x authorized account representative. Such NO_x authorized account representative and any alternate NO_x authorized account representative shall be selected by an agreement between all of the persons who have an ownership interest with respect to allowances held in the general account, that is binding on such persons. Such agreement shall include a procedure for authorizing any alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

15.1.2 Shall include all of the following information in a format specified by the Administrator:

15.1.2.1 At the option of the NO_x authorized account representative, the organization name and the type of organization;

15.1.2.2 The name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.

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

15.1.2.4 The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the alternate NO_x authorized account representative, as applicable, by an agreement

that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.”

- 15.1.2.5 The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative, and the date or dates the account certificate of representation was signed.
- 15.1.3 Shall not include, unless otherwise required by the Administrator, documents of agreement referred to in the application to establish a general account. If submitted, the Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents.
- 15.2 Upon receipt by the Administrator of a complete application for a general account under 15.1 of this regulation:
- 15.2.1 The NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative by the Administrator or a court regarding the general account
- 15.2.2 Any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.
- 15.2.3 The Administrator shall rely on the application submitted pursuant to 15.1 of this regulation unless and until the Administrator receives a superseding complete application for a general account changing the NO_x authorized account representative or alternate NO_x authorized account representative. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative or alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.
- 15.2.4 Except as provided in 15.2.3 of this regulation, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or the alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the alternate NO_x authorized account representative, or the finality of any decision or order by the Administrator under the NO_x Budget Trading Program.
- 15.2.5 The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized

account representative or the alternate NO_x authorized account representative for a general account.

15.3 Changes in Persons having Ownership Interest in any General Account

15.3.1 Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x 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 NO_x allowances in the general account to include the change.

15.3.2 In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

15.4 Submissions/Certifications

15.4.1 The NO_x authorized account representative or the alternate NO_x authorized account representative shall sign and certify all submissions under the NO_x Budget trading program with the following certification statement: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

15.4.2 The Administrator shall accept or act on any submission made under the NO_x Budget Trading program only if that submission has been made, signed, and certified in accordance with 15.4.1 of this regulation.

15.5 Closing of general accounts

15.5.1 The NO_x authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NATS and by correctly submitting for recordation under 10.0 of this regulation a request to transfer all NO_x allowances held in the account to one or more other NATS accounts.

15.5.2 If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the Administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NATS following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NO_x allowances into the account under 10.0 of this regulation or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

4 DE Reg. 1019 (12/01/00)

12 DE Reg. 347 (09/01/08)

Appendix A**Allowance Allocations to NO_x Budget Units under
3.1.1.1 and 3.1.1.2 of 7 DE Admin. Code 1139**

1.0 The State trading program budget allocated by the Department to NO_x Budget units identified in 3.1.1 of 7 **DE Admin. Code** 1139 shall equal 5,227 tons of NO_x emissions for each NO_x control period, beginning with the year 2003 control period. Table A-1 of this appendix identifies the NO_x Budget units that receive an allocation, and the size of that allocation. NO_x Budget units identified in 3.1.1 of 7 **DE Admin. Code** 1139 that are not identified in Table A-1 do not receive an allocation.

2.0 Individual unit allocations identified in Table A-1 of this appendix were determined as follows:

2.1 The unit's base heat input was determined as the average of the units two highest heat inputs for May through September of any of the four years 1995, 1996, 1997, and 1998. Where a unit had heat input during May through September in only one of the years 1995 through 1998, and had zero heat input during May through September of the other three years, that unit's base heat input was determined as the heat input during the non zero year.

2.2 The unit's base heat input determined in 2.1 of this appendix was multiplied by a NO_x emissions rate factor, and divided by 2000 lb/ton. NO_x emissions rate factors used were:

2.2.1 For any unit that serves a generator with a nameplate capacity of 15 MWe or greater, but less than 25 MWe, the unit's actual average 1996 ozone season NO_x emission rate, in lb/MMBTU.

2.2.2 For any unit that serves a generator with a nameplate capacity of 25 MWe or greater, 0.15 lb/MMBTU.

2.2.3 For any unit that does not serve a generator, 0.17 lb/MMBTU.

2.3 The tonnage determined in 2.2 of this appendix for all subject units were added together.

2.4 For each subject unit, the tonnage determined in 2.2 of this appendix was divided by the tonnage determined in 2.3 of this appendix.

2.5 The allocation to each subject unit was determined as the product of the factor determined in 2.4 of this appendix and the state trading program budget identified in 1.0 of this appendix, rounded to the nearest whole ton.

3.0 Any NO_x Budget unit that receives an allocation under this appendix shall continue to receive that allocation for each control period unless and until such time as the Department revises this appendix pursuant to 7 **Del.C.**, Chapter 60, and submits that revision to the Administrator as a revision to Delaware's State Implementation Plan.

4.0 Timing requirements for allocations.

4.1 No later than 60 days after the effective date of 7 **DE Admin. Code** 1139, the Department shall submit to the Administrator allocations in accordance with this appendix for the 2003, 2004, and 2005 control periods.

Appendix B**7 DE Admin. Code 1137 - 7 DE Admin. Code 1139 Program Transition**

1.0 Individual Unit Opt-ins. The Department may require any unit that is an opt-in unit under **7 DE Admin. Code 1137** of Delaware's "Regulations Governing the Control of Air Pollution" to be an opt-in unit under 14.0 of **7 DE Admin. Code 1139** of Delaware's "Regulations Governing the Control of Air Pollution."

2.0 Penalties. For any NO_x Budget unit under **7 DE Admin. Code 1137** of Delaware's "Regulations Governing the Control of Air Pollution" that has excess emissions following the year 2002 control period, the Administrator shall deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for the 2003 or subsequent control periods, equal to three times the number of the unit's excess emissions in the 2002 control period.

3.0 **7 DE Admin. Code 1137** transition allocation. Any Delaware source that holds, in its **7 DE Admin. Code 1137** compliance account, NO_x allowances that were allocated for the year 2000, 2001, or 2002 control periods under the OTC NO_x Budget program (i.e., **7 DE Admin. Code 1137** of Delaware's "Regulations Governing the Control of Air Pollution") and that were not used or required to be used for compliance with the requirements of **7 DE Admin. Code 1137** for the 2002 or prior control period, may be eligible for a special, one-time "transition allocation."

3.1 An application for a transition allocation under 3.0 of this appendix shall be submitted to the Department no later than March 1, 2003, and shall include all of the following information:

3.1.1 Identification of the affected NO_x Budget source and NO_x Budget unit;

3.1.2 Identification of the quantity of NO_x allowances remaining in the unit's **7 DE Admin. Code 1137** compliance account as of February 1, 2003;

3.1.3 Identification by serial number of all NO_x allowances remaining in the unit's **7 DE Admin. Code 1137** compliance account as of February 1, 2003; and

3.1.4 Certification by the NO_x authorized account representative consistent with 6.4 of **7 DE Admin. Code 1139**.

3.2 Not later than April 1, 2003, the Department shall approve or deny any request received under 3.1 of this appendix.

3.2.1 For any request that is approved, the Department shall notify the NO_x authorized account representative, and shall submit to the Administrator an allocation to the NO_x Budget unit's compliance account in accordance with the provisions of 3.3 of this appendix.

3.2.2 For any request that is not accurate or submitted in accordance with 3.1 of this appendix, the Department shall notify the NO_x authorized account representative that the request is denied, including the reason or reasons for any denial.

3.3 Any NO_x authorized account representative whose request is approved under 3.2.1 of this appendix shall receive a transition allocation as follows:

3.3.1 If the total number of allocations requested, and as approved by the Department, totaled among all Delaware NO_x Budget units is 168 or less the Department shall allocate to each subject unit their requested allocation.

- 3.3.2 If the total number of allocations requested, and as approved by the Department, totaled among all Delaware NO_x Budget units is greater than 168, the Department shall allocate to each subject unit according to the following formula:

$$\text{Unit's allocation} = \left[\frac{\text{Unit's requested and approved allocation}}{\text{Total number of requested and approved allocations among all Delaware sources}} \right] \times (168)$$

where: "Unit's requested and approved allocation" is the number allocations requested by the unit's NO_x authorized account representative and approved by the Department in accordance 3.2.1 of this appendix.

"Total number of requested and approved allocations among all Delaware sources" is the sum total of all allocations requested in accordance with 3.1 of this appendix, and approved by the Department in accordance with 3.2.1 of this appendix, among all Delaware sources.

"Unit's allocation" shall be whole number, with all fractional allocations rounded down to the next whole number.

- 3.4 No later than May 1, 2003, the Department shall submit to the Administrator for recordation the allocations determined under 3.0 of this appendix.
- 3.5 Allocations recorded under 3.4 of this appendix may be deducted for compliance under 12.0 of this regulation for the control periods in 2003 or 2004. The Administrator shall deduct as retired any NO_x allowance that is recorded under 3.4 of this appendix and is not deducted for compliance in accordance with 12.0 of 7 **DE Admin. Code** 1139 for the 2003 or 2004 control period.
- 3.6 NO_x allowances recorded under 3.4 of this appendix shall be treated as banked allowances in 2004.

4.0 To provide for the transition from the program established under 7 **DE Admin. Code** 1137 to the program established under 7 **DE Admin. Code** 1139; for any NO_x Budget unit that is subject to both 7 **DE Admin. Code** 1137 and 7 **DE Admin. Code** 1139, the Department may allow that unit to comply with any requirement of 7 **DE Admin. Code** 1139 in lieu of any substantially equivalent requirement of 7 **DE Admin. Code** 1137. Such requirements may include, but are not limited to permitting, record keeping, monitoring, and reporting requirements.