

“Normal source operation” means a condition in which an emissions source’s activity level falls within a range that is typical for that emissions source.

“Operating permit” is as defined in N.J.A.C. 7:27-22.1.

“Operator” means the individual who is in control of or in charge of an emissions source while it is in operation.

“Owner” means a person who claims lawful possession of an emissions source by virtue of legal title or equitable interest therein which entitles that person to such possession.

“Oxides of nitrogen” or “NO_x” means all oxides of nitrogen, except nitrous oxide, as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR Part 60 Appendix A methods 7 through 7E.

“Ozone season” means the portion of each year beginning May 1 and ending September 30.

“Person” means an individual, public or private corporation, company, international entity, institution, county, municipality, state, interstate body, the United States of America, or any agency, board, commission, employee, agent, officer, or political subdivision of a state, an interstate body, or the United States of America.

“Real” means actual, genuine and authentic.

“Registry” means the electronic database, designated by the Department, which records and tracks the generation, verification, transfer and use of DERs.

“Retire” means, with respect to DERs, to make a DER permanently unavailable for use.

“Shutdown” means the permanent cessation of the activity that results in emissions at all or part of an emissions source. For the purposes of this subchapter, scrapping of mobile sources is not considered a shutdown.

“State Implementation Plan” or “SIP” means a plan developed by New Jersey, as required under Titles I and II of the Federal Clean Air Act, and submitted by the State to the EPA. The plan sets forth the means by which the State will attain or maintain the NAAQS established by the EPA.

“Stationary source” means an emissions source that is not a mobile source.

“Surplus” means, with respect to emission reductions used for the generation of DERs, not required pursuant to any air quality emission limit or standard in any applicable law, regulation, permit, or order and not relied upon in a SIP. An emission reduction calculated in accordance with N.J.A.C. 7:27-30.5 and 30.20, and not prohibited as a basis for DERs under N.J.A.C. 7:27-30.6, is considered surplus.

“Use period” means the period of the time when a user uses DERs to comply with an applicable emission limit.

“User” means the owner or operator of a user source.

“User source” means any emissions source for which the owner or operator seeks to use DERs for compliance in accordance with this subchapter.

“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For purpose of determining compliance with emissions limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR §51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR §51.100(s)(1) currently includes the compounds and classes of perfluorocarbons set forth below:

Compounds

methane
 methylene chloride (dichloromethane)
 1,1,1-trichloroethane (methyl chloroform)
 trichlorofluoromethane (CFC-11)
 dichlorodifluoromethane (CFCC-12)
 chlorodifluoromethane (HCFC-22)
 trifluoromethane (FC-23)
 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
 chloropentafluoroethane (CFC-115)
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
 pentafluoroethane (HFC-125)
 1,1,2,2-tetrafluoroethane (HFC-134)
 1,1,1,2-tetrafluoroethane (HFC-134a)
 1,1-dichloro-1-fluoroethane (HCFC-141b)
 1-chloro-1,1-difluoroethane (HCFC-142b)
 1,1,1-trifluoroethane (HFC-143a)
 1,1-difluoroethane (HFC-152A)
 acetone

Classes of perfluorocarbons:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

If there is any conflict between the list at 40 CFR §51.100(s)(1) and the list set forth above, the list at 40 CFR §51.100(s)(1) shall control.

7:27-30.3 General provisions

(a) A DER used for compliance under this subchapter is a limited authorization to emit NO_x or VOC in accordance with the provisions of this subchapter, the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 et seq.) and rules promulgated thereunder. A DER does not constitute or convey a property right. Nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit such authorization.

(b) A person may generate, transfer or use DERs in accordance with this subchapter, without prior Federal, State or local government approval except when DERs are to be used pursuant to N.J.A.C. 7:27-30.13(c) to comply with emission offset requirements under N.J.A.C. 7:27-18.

(c) Any submittal to the Department that is required or allowed under this subchapter shall be made to the applicable address listed below:

1. If the submittal concerns a generator source or user source located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:

Department of Environmental Protection
Central Regional Office
Air and Environmental Quality Enforcement
CN 407
Trenton, NJ 08625-0407

2. If the submittal concerns a generator source or user source located in Bergen, Essex, Hudson, or Union County:

Department of Environmental Protection
Metro Regional Office
Air and Environmental Quality Enforcement
2 Babcock Place
West Orange, NJ 07052

3. If the submittal concerns a generator source or user source located in Hunterdon, Morris, Passaic, Somerset, Sussex, or Warren County:

Department of Environmental Protection
Northern Regional Office
Air and Environmental Quality Enforcement
1259 Route 46, Building 2
Parsippany-Troy Hills, NJ 07054

4. If the submittal concerns a generator source or user source located in Atlantic, Camden, Cape May, Cumberland, Gloucester, or Salem County:

Department of Environmental Protection
Southern Regional Office
Air and Environmental Quality Enforcement
20 East Clementon Road
Gibbsboro, NJ 08525

- (d) Any submittal to the registry that is required under this subchapter shall be made to the following address:

Attention: Emissions Trading
Office of the Assistant Commissioner—Enforcement
Department of Environmental Protection
CN 422
401 East State Street
Trenton, New Jersey 08625-0422

- (e) A DER represents one-twentieth of a ton of emission reductions. Any quantity of DERs generated shall be rounded to the next lowest twentieth of a ton. Any quantity of DERs used shall be rounded to the next highest twentieth of a ton. Only whole DERs may be transferred.

7:27-30.4 DER generation: general requirements

(a) Except as provided under N.J.A.C. 7:27-30.6, a person may generate one or more DERs by taking an action to reduce the actual emission rate of a generator source owned or operated by the person below the source's baseline emission rate. An owner or operator of a facility may also generate one or more DERs, if the facility is subject to a facility-wide permit issued under N.J.S.A. 13:1D-48, by taking pollution prevention measures which reduce the facility's fugitive emissions (as defined at N.J.A.C. 7:27-18.1); and an owner or operator of a refinery may generate one or more DERs by reformulating motor vehicle fuel sold in New Jersey. In addition, a person may generate one or more DERs through the reduction of emissions from sources not owned or operated by that person by causing emission reductions to result from either of the following:

1. A reduction in mobile source activity levels that results from an activity reduction plan approved by the EPA or a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50); or

3. A statement that the DERs were not generated from an emissions reduction listed in N.J.A.C. 7:27-30.6 or as a result of actions prohibited under this subchapter or other provisions of law; and

4. If the generator filed the Notice more than 90 days after the last day of the generation period, a statement that the generator has reduced the quantity of DERs as required under (a) above.

7:27-30.8 DER registry

(a) A user source located in New Jersey may not use a DER for compliance unless the registry shows that the user holds the DER, that the DER is verified, that the DER has not been used previously or retired, and that neither the Department nor the EPA has found the DER to be invalid.

(b) The registry includes information from the following notices:

1. The Notice and Certification of DER Generation;
2. The Notice of Transfer;
3. The Notice of DER Verification;
4. The Notice of Intent to Use DERs;
5. The Notice and Certification of DER Use;
6. The notice from the Department or the EPA pursuant to N.J.A.C. 7:27-30.10(e) or 30.11(h) that a DER is invalid; and
7. The Notice of Retirement pursuant to N.J.A.C. 7:27-30.11(j).

(c) This subsection shall become operative upon the publication in the New Jersey Register of an administrative correction to N.J.A.C. 7:27-30.3(d) listing an address for the registry that is not the Department's address. Within one business day after receiving a notice listed in (b) above, the operator of the registry shall determine whether the notice contains all items required under this subchapter. If the notice contains all required items, then within one additional business day the operator of the registry shall update the registry to include the notice (and, if the notice is a Notice and Certification of DER Generation, assign a unique serial number to the DERs included in the notice and note all such serial numbers on the registry's copy of the notice). If the notice is missing a required item, the operator of the registry shall return the notice to the person who submitted it, and shall not update the registry to include the notice.

(d) A person has not satisfied a requirement to submit a notice to the registry until the date on which the registry receives a complete notice which includes all items required under this subchapter. If the notice is sent by certified mail or by another method which provides a receipt showing the date of delivery, the date shown on the receipt is the date on which the registry shall be deemed to have received the notice. Otherwise, the date which the registry's records show as the date of receipt shall control.

(e) This subsection shall become inoperative upon the operative date of (c) above. Within three business days after the office listed in N.J.A.C. 7:27-30.3(d) receives a notice listed in (b) above, the Department shall determine whether the notice contains all items required under this subchapter. If the notice is missing a required item, the Department shall return the notice to the person who submitted it.

7:27-30.9 DER transfer

(a) A person who transfers one or more DERs shall provide a complete copy of the following to the transferee at the time of the transfer:

1. The Notice and Certification of DER Generation for each batch of DERs of which the transferred DERs are a part;
2. All supporting documentation for the Notice and Certification of DER Generation; and
3. The Notice of DER Verification, if any.

(b) A user shall obtain a complete copy of the documentation listed in (a) above at the time a DER is transferred to the user.

(c) When one or more DERs is transferred, the transferor and transferee shall execute a Notice of Transfer. The transferor and transferee shall complete the Notice of Transfer on a form obtained from the registry, including information to identify the transferor, the transferee, the DERs, and the purchase price. The transferee shall submit the Notice of Transfer to the registry.

7:27-30.10 DER verification

(a) Only the following persons may verify DERs that are to be used in New Jersey:

1. A professional engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8; or
2. A certified public accountant certified by the New Jersey Board of Accountancy pursuant to N.J.S.A. 45:2B.

(b) A verifier shall be independent of the generator. A verifier shall not be considered independent if he or she:

1. Is employed by the generator, or was employed by the generator within the six months before the verification; or
2. Is employed by an entity that prepared the Notice and Certification of DER Generation or any of its supporting documentation for the batch of DERs being verified, assisted the generator in such preparation, or otherwise assisted the generator in connection with the generation of the batch of DERs being verified.

(c) A DER can be verified only if the verifier determines that all of the following apply, based on diligent inquiry that is not limited to reliance upon representations made by the generator:

1. The DER is not based on an emission reduction which cannot be the basis for generation of a DER pursuant to N.J.A.C. 7:27-30.6;
2. The generator used an emission quantification protocol that applies to the emission reductions generated and satisfies the requirements of N.J.A.C. 7:27-30.20;
3. The Notice and Certification of DER Generation, and all supporting documentation, contains all of the information required under this subchapter and the applicable emission quantification protocol;

4. The Notice and Certification of DER Generation, and all supporting documentation, does not appear on its face to omit any information necessary to make it true, accurate and complete;

5. The supporting documentation establishes that all calculations were performed as required under this subchapter and the emission quantification protocol; and

6. The supporting documentation establishes that DERs are based on emission reductions which are real and surplus, and satisfy all applicable requirements of this subchapter for the generation of DERs.

(d) After verifying the DERs, the verifier shall complete a Notice of DER Verification on a form provided by the registry. The verifier shall submit the Notice to the person who holds the DERs and to the registry. In the Notice, the verifier shall include the following:

1. Information identifying the verifier and the verifier's employer;
2. The unique serial numbers assigned to each DER verified;
3. A statement that the verifier has made each of the specific findings required under (c) above, based on the diligent inquiry required under (c) above;
4. A statement that the DERs are verified; and
5. The certification required under N.J.A.C. 7:27-1.39.

(e) If the Department or the EPA determines at any time that a DER in the registry does not satisfy all of the requirements of (c) above, the Department or the EPA (as applicable) shall notify the registry and the generator that the DER is invalid.

7:27-30.11 DER use: general requirements

(a) A user shall use only DERs which satisfy the requirements of N.J.A.C. 7:27-30.8(a).

(b) A user shall not use a DER based on NO_x emission reductions to comply with a VOC requirement, and shall not use a DER based on VOC emission reductions to comply with a NO_x requirement.

(c) A user shall not use a DER based on emission reductions that occurred outside the ozone season to comply with any requirement during the ozone season.

(d) A use period shall not exceed one year. However, DERs may be used over consecutive use periods.

(e) At least 30 days before using a DER, the user shall give notice of the intended use to the registry. The notice shall be in the form of a Notice of Intent to Use DERs, or an amendment to a previously submitted Notice of Intent to Use DERs. If the notice is late, then the number of DERs required for compliance from the beginning of the use period described in the notice (or amended notice) until the full 30 days has elapsed shall be multiplied by 1.5. The use period or amended use period (as applicable) shall not begin before the notice is filed.

(f) The user shall hold the full quantity of DERs needed for compliance before using them, and shall continue to hold all such DERs until filing the Notice and Certification of DER Use. If the user fails to do so, then the number of DERs needed for compliance for each day that the shortfall continues shall be multiplied by three.

(g) For each day on which the multipliers in both (e) and (f) above apply, the number of DERs needed for compliance shall be multiplied by 4.5.

(h) If the Department determines that the DERs that a user intends to use or has used are invalid, the Department shall so notify the user and the registry. Within 60 days after receiving the notice, the user shall become the holder of other DERs to replace the invalid DERs and shall amend the Notice of Intent to Use DERs or Notice and Certification of DER Use to reflect the replacement DERs.

(i) The Department may request an interim calculation (pursuant to N.J.A.C. 7:27-30.12) of the quantity of DERs needed for compliance as of any date during the use period. The user shall submit the interim calculation to the Department within 15 days after receiving the Department's request.

(j) A person may retire one or more DERs. To retire a DER, the person who holds the DERs shall execute a Notice of Retirement and submit it to the registry. The holder shall complete the Notice of Retirement on a form provided by the registry, including information to identify the DERs and the holder. A person who retires a DER is not required to submit a Notice of Intent to Use DERs or Notice and Certification of DER Use for that DER.

(k) The user may be subject to penalties for violation of the emission limit for which DERs were to be used for compliance, if the user:

1. Purports to use DERs which do not satisfy the requirements of N.J.A.C. 7:27-30.8(a), or for purposes prohibited under (b) or (c) above;
2. Fails to submit the Notice of Intent to Use DERs before the use period was to begin, or fails to submit an amendment to the notice before the amended use was to begin;