

N.J.A.C. 7:27C-6.9, as of the CO₂ allowance transfer deadline, in the source's compliance account in an amount not less than the total CO₂ emissions for the control period from all CO₂ budget units at the source, as determined in accordance with N.J.A.C. 7:27C-6 and 8.

(g) Each ton of CO₂ emitted in excess of the CO₂ budget emissions limitation shall constitute a separate violation of this subchapter and applicable State law.

(h) CO₂ allowances shall be held in, deducted from, or transferred among CO₂ Allowance Tracking System accounts in accordance with N.J.A.C. 7:27C-5, 6 and 7.

(i) A CO₂ allowance shall not be deducted, in order to comply with (f) above, for a control period that ends prior to the year for which the CO₂ allowance was allocated.

(j) A CO₂ offset allowance shall not be deducted, in order to comply with (f) above, beyond the applicable percent limitations at N.J.A.C. 7:27C-6.9(a)3.

(k) A CO₂ allowance is a limited authorization by the Department or a participating state to emit one ton of CO₂ in accordance with this chapter. No provision of the CO₂ Budget Trading Program, this chapter, the application for a new or modified operating permit to incorporate the requirements of the CO₂ Budget Trading Program, or the operating permit that includes the requirements of the CO₂ Budget Trading Program shall be construed to limit the authority of the Department or a participating state to terminate or limit such authorization.

(l) A CO₂ allowance does not constitute a property right.

(m) The owners and operators of a CO₂ budget source that has excess emissions in any control period shall:

1. Forfeit the CO₂ allowances required for deduction under N.J.A.C. 7:27C-6.9(e);

2. Not use any CO₂ offset allowances to cover any part of such excess emissions; and

3. Pay any fine, penalty, or assessment or comply with any other remedy imposed under N.J.A.C. 7:27C-6.9(f).

(n) Except as provided at (n)1 below, the owners and operators of the CO₂ budget source and each CO₂ budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. The Department may at any time prior to the end of the 10-year period extend the 10-year period, if it determines that retention of the documents beyond the 10-year period is necessary to determine compliance with the requirements of this chapter:

1. The account certificate of representation for the CO₂ authorized account representative for the CO₂ budget source and each CO₂ budget unit at the source and all documents that demonstrate the truth of the statements in

the account certificate of representation, in accordance with N.J.A.C. 7:27C-2.4, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded by a submitted new account certificate of representation changing the CO₂ authorized account representative of the CO₂ budget source;

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

3. Copies of all reports, compliance certifications, and other submissions, and all records made or required under the CO₂ Budget Trading Program; and

4. Copies of all documents used to complete an application for a new or modified operating permit that incorporates the requirements of the CO₂ Budget Trading Program and any other submission under the CO₂ Budget Trading Program or to demonstrate compliance with the requirements of the CO₂ Budget Trading Program.

(o) The CO₂ authorized account representative of a CO₂ budget source and each CO₂ budget unit at the source shall submit the reports and compliance certifications required under this chapter, including the requirements at N.J.A.C. 7:27C-4.

(p) A violation of the requirements of this chapter cannot be cured by a revision to the operating permit of a CO₂ budget source if that revision is effective after the violation occurs.

(q) Each provision of this chapter that applies to a CO₂ budget source or to the CO₂ authorized account representative of the CO₂ budget source also applies to the owners and operators of such source and of the CO₂ budget units at the source.

(r) Each provision of this chapter that applies to a CO₂ budget unit or to the CO₂ authorized account representative of the CO₂ budget unit also applies to the owners and operators of such unit.

(s) No provision of the CO₂ Budget Trading Program, this chapter, the application for a new, renewed, or modified operating permit to incorporate the requirements of the CO₂ Budget Trading Program, or the operating permit that includes the requirements of the CO₂ Budget Trading Program, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO₂ authorized account representative of a CO₂ budget source or CO₂ budget unit from compliance with any other provisions of applicable State and Federal law and regulations.

7:27C-1.5 Computation of time

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

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

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

7:27C-1.6 Appeal procedure

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

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

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street, 4th Floor
PO Box 402
Trenton, New Jersey 08625-0402

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

1. The name, address, and telephone number of the person making the request;
2. When the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant;
3. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
4. A brief and clear statement of the Department decision being appealed, indicating the specific grounds for the applicant's appeal;
5. A copy of the Department notice or decision for which a hearing is being requested;
6. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue shall also be included; and
7. All information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, such information shall be specifically referenced in the request).

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

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

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

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

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

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

(j) At the conclusion of any adjudicatory hearing in the Office of Administrative Law, the administrative law judge will submit an initial decision to the Commissioner. The Commissioner will issue a final decision affirming, rejecting, or modifying the findings of fact and conclusions of law in the Initial Decision, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(k) The Commissioner's final decision under (j) above may be appealed to the Appellate Division of the Superior Court, within the time provided by court rule.

7:27C-1.7 Severability

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