

**SUBPART 243-5****CAIR NO<sub>x</sub> OZONE SEASON ALLOWANCE ALLOCATIONS**

Sec.	
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**Historical Note**

Subpart (§§ 243-5.1 — 243-5.3) filed Sept. 19, 2007 eff. 30 days after filing.

**§ 243-5.1 CAIR NO<sub>x</sub> Ozone Season Trading Program budgets.**

(a) The Phase 1 CAIR NO<sub>x</sub> Ozone Season Trading Program budget for the 2009 through 2014 control periods is 31,091 tons for each control period.

(b) The Phase 2 CAIR NO<sub>x</sub> Ozone Season Trading Program budget for the control period of 2015 and beyond is 27,652 tons for each control period.

**Historical Note**

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

**§ 243-5.2 Timing requirements for CAIR NO<sub>x</sub> Ozone Season allowance allocations.**

(a) By September 30, 2007, the department will submit to the administrator, in a format prescribed by the administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in accordance with section 243-5.3 of this Subpart, for the 2009, 2010 and 2011 control periods.

(b) By October 31, 2008 and October 31st of each year thereafter, the department will submit to the administrator, in a format prescribed by the administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in accordance with section 243-5.3 of this Subpart, for the control period in the year that is four years after the year of the applicable deadline for submission under this subdivision. If the department fails to submit CAIR NO<sub>x</sub> Ozone Season allowance allocations in accordance with the preceding sentence, the administrator will, for the applicable control period, repeat the NO<sub>x</sub> allowance allocations that were performed for the previous control period. Should the department fail to submit to the administrator CAIR NO<sub>x</sub> Ozone Season allowance allocations for the 2015 control period, the administrator will allocate to each CAIR NO<sub>x</sub> Ozone Season unit CAIR NO<sub>x</sub> Ozone Season allowances from the Phase 2 CAIR NO<sub>x</sub> Ozone Season Trading Program budget based on the unit's proportional share of its previous allocation.

**Historical Note**

Sec. filed Sept. 19, 2007 eff. 30 days after filing.

**§ 243-5.3 CAIR NO<sub>x</sub> Ozone Season allowance allocations.**

(a) For purposes of allocating CAIR NO<sub>x</sub> Ozone Season allowances to CAIR NO<sub>x</sub> Ozone Season units in the four sectors of the CAIR NO<sub>x</sub> Ozone Season units delineated under section 243-1.4(a) of this Part, the CAIR NO<sub>x</sub> Ozone Season Trading Program budget for each year set forth in section 243-5.1 of this Subpart is divided into four sector budgets as follows:

(1) The total number of CAIR NO<sub>x</sub> Ozone Season allowances that may be allocated to units subject to the provisions of this Part pursuant to section 243-1.4(a)(1)(i) and (ii) of this Part are:

- (i) 20,632 for 2009 through 2014; and
- (ii) 17,193 for 2015 and thereafter.

These figures represent the sector budget for electricity generating units having a nameplate capacity greater than 25 MWe.

(2) The total number of CAIR NO<sub>x</sub> Ozone Season allowances that may be allocated to units subject to the provisions of this Part pursuant to section 243-1.4(a)(1)(iii) of this Part is

1,328. This figure represents the sector budget for additional electricity generating units subject to the NO<sub>x</sub> SIP call.

(3) The total number of CAIR NO<sub>x</sub> Ozone Season allowances that may be allocated to units subject to the provisions of this Part pursuant to section 243-1.4(a)(2) of this Part is 6,271. This figure represents the sector budget for Portland cement kiln units.

(4) The total number of CAIR NO<sub>x</sub> Ozone Season allowances that may be allocated to units subject to the provisions of this Part pursuant to section 243-1.4(a)(3) of this Part is 2,860. This figure represents the sector budget for non-electricity generating units.

(b) *Electricity generating units having a nameplate capacity greater than 25 MWe.* For each instance that the department allocates CAIR NO<sub>x</sub> Ozone Season allowances under this subdivision, the department will determine the number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to each CAIR NO<sub>x</sub> Ozone Season unit that is not eligible to receive CAIR NO<sub>x</sub> Ozone Season allowances under subdivision (f) of this section, in accordance with the following procedures:

(1) First round calculation. Multiply the greatest heat input experienced by the unit for any single control period among the three most recent control periods, for which data are available, that precede the date by which the department must make the CAIR NO<sub>x</sub> Ozone Season allowance allocations pursuant to section 243-5.2 of this Subpart by the lesser of:

- (i) (a) for the 2009 through 2014 control periods, 0.15 lb/mmBtu;
- (b) for the 2015 control period and thereafter, 0.125 lb/mmBtu; or
- (ii) the lowest applicable emission rate.

(2) Second round calculation. Determine the allocation factor by dividing the number representing 85 percent of the sector budget by the sum of the first round calculation results for all the units.

(3) Third round calculation. Multiply the allocation factor by each unit's first round calculation result.

(4) Fourth round calculation. The number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to each unit will be the lesser of:

- (i) the number representing the unit's CPSTE; or
- (ii) the third round calculation result for the unit plus the number representing the unit's proportional share of any unassigned CAIR NO<sub>x</sub> Ozone Season allowances remaining in the 85 percent portion of the sector budget as determined by dividing the unit's first round calculation result by the sum of the first round calculation results for all units.

*Note:* In this fourth round calculation the CPSTE limitation of subparagraph (i) of this paragraph may affect some units sooner than others leaving some CAIR NO<sub>x</sub> Ozone Season allowances unallocated after the calculation is first performed. Thus, this fourth round calculation may be performed more than once in order to allocate all remaining unassigned CAIR NO<sub>x</sub> Ozone Season allowances.

(5) The department will allocate CAIR NO<sub>x</sub> Ozone Season allowances only in whole ton increments. Following the department's completion of the allocation methodology of paragraphs (1) through (4) of this subdivision, the department will combine all fractional shares of CAIR NO<sub>x</sub> Ozone Season allowances that have been allocated to the pertinent compliance accounts. The resulting number of whole allowances resulting from this combination will then be individually allocated to CAIR NO<sub>x</sub> Ozone Season units with the first allowance being allocated to the unit having the largest fractional share, the second allowance being allocated to the unit having the next largest fractional share, and so on until all whole allowances are allocated.

(c) *Additional electricity generating units subject to the NO<sub>x</sub> SIP call.* For each instance that the department allocates CAIR NO<sub>x</sub> Ozone Season allowances under this subdivision, the department will determine the number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to

each CAIR NO<sub>x</sub> Ozone Season unit is not eligible to receive CAIR NO<sub>x</sub> Ozone Season allowances under subdivision (f) of this section, in accordance with the following procedures:

- (1) First round calculation. Multiply the greatest heat input experienced by the unit for any single control period among the three most recent control periods, for which data are available, that precedes the date by which the department must make the CAIR NO<sub>x</sub> Ozone Season allowance allocations pursuant to section 243-5.2 of this Subpart by the lesser of:
  - (i) 0.15 lb/mmBtu; or
  - (ii) the lowest applicable emission rate.
- (2) Second round calculation. Determine the allocation factor by dividing the number representing 85 percent of the sector budget by the sum of the first round calculation results for all the units.
- (3) Third round calculation. Multiply the allocation factor by each unit's first round calculation result.
- (4) Fourth round calculation. The number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to each unit will be the lesser of:
  - (i) the number representing the unit's CPPTE; or
  - (ii) the third round calculation result for the unit plus the number representing the unit's proportional share of any unassigned CAIR NO<sub>x</sub> Ozone Season allowances remaining in the 85 percent portion of the sector budget as determined by dividing the unit's first round calculation result by the sum of the first round calculation results for all units.

*Note:* In this fourth round calculation the CPPTE limitation of subparagraph (i) of this paragraph may affect some units sooner than others leaving some CAIR NO<sub>x</sub> Ozone Season allowances unallocated after the calculation is first performed. Thus, this fourth round calculation may be performed more than once in order to allocate all remaining unassigned CAIR NO<sub>x</sub> Ozone Season allowances.

(5) The department will allocate CAIR NO<sub>x</sub> Ozone Season allowances only in whole ton increments. Following the department's completion of the allocation methodology of paragraphs (1) through (4) of this subdivision, the department will combine all fractional shares of CAIR NO<sub>x</sub> Ozone Season allowances that have been allocated to the pertinent compliance accounts. The resulting number of whole allowances resulting from this combination will then be individually allocated CAIR NO<sub>x</sub> Ozone Season units with the first allowance being allocated to the unit having the largest fractional share, the second allowance being allocated to the unit having the next largest fractional share, and so on until all whole allowances are allocated.

(d) *Portland cement kiln units.* For each instance that the department allocates CAIR NO<sub>x</sub> Ozone Season allowances under this subdivision, the department will determine the number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to each CAIR NO<sub>x</sub> Ozone Season unit that is not eligible to receive CAIR NO<sub>x</sub> Ozone Season allowances under subdivision (f) of this section, in accordance with the following procedures:

- (1) First round calculation. Multiply the greatest clinker production rate (ton-clinker) experienced by the unit for any single control period among the three most recent control periods, for which data are available, that precedes the date by which the department must make the CAIR NO<sub>x</sub> Ozone Season allowance allocations pursuant to section 243-5.2 of this Subpart by the lesser of:
  - (i) the lowest applicable emission rate (in lb/ton-clinker); or
  - (ii)
    - (a) for any long wet kiln, 6.0 lb/ton-clinker;
    - (b) for any long dry kiln, 5.1 lb/ton-clinker;
    - (c) for any preheater kiln, 3.8 lb/ton-clinker; and
    - (d) for any preheater/precalciner or precalciner kiln, 2.8 lb/ton-clinker.

- (2) Second round calculation. Determine the allocation factor by dividing the 85 percent portion of the sector budget by the sum of the first round calculation results for all units.
- (3) Third round calculation. Multiply the allocation factor by each unit's first round calculation result.
- (4) Fourth round calculation. The number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to each unit will be the lesser of:
  - (i) the number representing the unit's CPPTE; or
  - (ii) the third round calculation result for the unit plus the number representing the unit's proportional share of any unassigned CAIR NO<sub>x</sub> Ozone Season allowances remaining in the 85 percent portion of the sector budget as determined by dividing the unit's first round calculation result by the sum of the first round calculation results for all units.

*Note:* In this fourth round calculation the CPPTE limitation of subparagraph (i) of this paragraph may affect some units sooner than others leaving some CAIR NO<sub>x</sub> Ozone Season allowances unallocated after the calculation is first performed. Thus, this fourth round calculation may be performed more than once in order to allocate all remaining unassigned CAIR NO<sub>x</sub> Ozone Season allowances.

(5) The department will allocate CAIR NO<sub>x</sub> Ozone Season allowances only in whole ton increments. Following the department's completion of the allocation methodology of paragraphs (1) through (4) of this subdivision, the department will combine all fractional shares of CAIR NO<sub>x</sub> Ozone Season allowances that have been allocated to the pertinent compliance accounts. The resulting number of whole allowances resulting from this combination will then be individually allocated CAIR NO<sub>x</sub> Ozone Season units with the first allowance being allocated to the unit having the largest fractional share, the second allowance being allocated to the unit having the next largest fractional share, and so on until all whole allowances are allocated.

(e) *Non-electricity generating units.* For each instance that the department allocates CAIR NO<sub>x</sub> Ozone Season allowances, the department will determine the number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to each CAIR NO<sub>x</sub> Ozone Season unit subject to section 243-1.4(a)(3) of this Part in accordance with the following procedures:

(1) First round calculation. (i) CAIR NO<sub>x</sub> Ozone Season units that have not previously received CAIR NO<sub>x</sub> Ozone Season allowances from the CAIR NO<sub>x</sub> Ozone Season new unit set-aside allocation under subdivision (f) of this section.

(a) For the 2009 control period and every control period thereafter:

(1) if the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4 is less than or equal to 0.17 lb/mmBtu, multiply the average of the highest heat input experienced by the unit for any two control periods among the four control periods preceding the date by which the department must submit the CAIR NO<sub>x</sub> Ozone Season allocations to the administrator pursuant to section 243-5.2(b) of this Subpart by 0.17 lb/mmBtu; and

(2) if the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4 is greater than 0.17 lb/mmBtu, multiply the average of the highest heat input experienced by the unit for any two control periods among the four control periods preceding the date by which the department must submit the CAIR NO<sub>x</sub> Ozone Season allocations to the administrator pursuant to section 243-5.2(b) of this Subpart by the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4.

(ii) CAIR NO<sub>x</sub> Ozone Season units that have previously received CAIR NO<sub>x</sub> Ozone Season allowances from the CAIR NO<sub>x</sub> Ozone Season new unit set-aside allocation under subdivision (f) of this section. For every control period for which CAIR NO<sub>x</sub> Ozone Season allowances will be allocated, multiply the greatest heat input experienced by the unit for any single control period among the three control periods preceding the date by which the

department must submit the CAIR NO<sub>x</sub> Ozone Season allocations to the administrator pursuant to section 243-5.2(b) of this Subpart by 0.17 lb/mmBtu.

(2) Second round calculation. (i) When the sum of the first round calculation results for all CAIR NO<sub>x</sub> Ozone Season units is greater than or equal to the number representing the 85 percent portion of the non-electricity generating unit sector budget:

(a) for units covered by subclause (1)(i)(a)(1) of this subdivision, the allocation factor is one; and

(b) for units covered by subclause (1)(i)(a)(2) and subparagraph (1)(ii) of this subdivision, determine the allocation factor by dividing the total of the 85 percent portion of the non-electricity generating unit sector budget minus the sum of the first round calculation results for units covered by subclause (1)(i)(a)(1) of this subdivision by the sum of the first round calculation results for units covered by subclause (1)(i)(a)(2) and subparagraph (1)(ii) of this subdivision.

(ii) When the sum of the first round calculation results for all CAIR NO<sub>x</sub> Ozone Season units is less than the number representing the 85 percent portion of the non-electricity generating unit sector budget, determine the allocation factor by dividing the 85 percent portion of the non-electricity generating unit sector budget by the sum of the first round calculations for all non-electricity generating units.

(3) Third round calculation. Multiply the allocation factor by each unit's first round calculation result.

(4) Fourth round calculation. The number of CAIR NO<sub>x</sub> Ozone Season allowances to be allocated to each unit will be the lesser of:

(i) the number representing the unit's CPPTE; or

(ii) the third round calculation result for the unit plus the number representing the unit's proportional share of any unassigned CAIR NO<sub>x</sub> Ozone Season allowances remaining in the 85 percent portion of the sector budget as determined by dividing the unit's first round calculation result by the sum of the first round calculation results for all units.

*Note:* In this fourth round calculation the CPPTE limitation of subparagraph (i) of this paragraph may affect some units sooner than others leaving some CAIR NO<sub>x</sub> Ozone Season allowances unallocated after the calculation is first performed. Thus, this fourth round calculation may be performed more than once in order to allocate all remaining unassigned CAIR NO<sub>x</sub> Ozone Season allowances.

(5) The department will allocate CAIR NO<sub>x</sub> Ozone Season allowances only in whole ton increments. Following the department's completion of the allocation methodology of paragraphs (1) through (4) of this subdivision, the department will combine all fractional shares of CAIR NO<sub>x</sub> Ozone Season allowances that have been allocated to the pertinent compliance accounts. The resulting number of whole allowances resulting from this combination will then be individually allocated CAIR NO<sub>x</sub> Ozone Season units with the first allowance being allocated to the unit having the largest fractional share, the second allowance being allocated to the unit having the next largest fractional share, and so on until all whole allowances are allocated.

(f) *CAIR NO<sub>x</sub> Ozone Season new unit set-aside allocations.* For each control period, the department will determine CAIR NO<sub>x</sub> Ozone Season allowances distributions to any CAIR NO<sub>x</sub> Ozone Season unit under section 243-1.4 of this Part that commenced operation, or is projected to commence operation, in New York State on or after May 1, 2003, in accordance with the following procedures:

(1) The department will establish a CAIR NO<sub>x</sub> Ozone Season new unit set-aside allocation for each control period consisting of five percent of the New York State CAIR NO<sub>x</sub> Trading Program budget set forth in section 243-5.1 of this Subpart.

(2) Only CAIR NO<sub>x</sub> Ozone Season units under section 243-1.4 of this Part may receive CAIR NO<sub>x</sub> Ozone Season allowances from the CAIR NO<sub>x</sub> Ozone Season new unit set-aside

allocations established in paragraph (1) of this subdivision. No unit that becomes a CAIR NO<sub>x</sub> Ozone Season unit by opting-in under Subpart 243-9 of this Part may receive CAIR NO<sub>x</sub> Ozone Season allowances from these CAIR NO<sub>x</sub> Ozone Season new unit set-aside allocations.

(3) CAIR NO<sub>x</sub> Ozone Season allowances may be transferred to CAIR NO<sub>x</sub> Ozone Season units for no more than six consecutive control periods, starting with the control period during which the CAIR NO<sub>x</sub> Ozone Season unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which the CAIR NO<sub>x</sub> Ozone Season unit will receive an allocation pursuant to subdivision (b), (c), (d), or (e) of this section.

(4) The CAIR designated representative of a CAIR NO<sub>x</sub> Ozone Season unit may submit a written request to the department to reserve for the CAIR NO<sub>x</sub> Ozone Season unit a number of CAIR NO<sub>x</sub> Ozone Season allowances in the relevant CAIR NO<sub>x</sub> Ozone Season new unit set-aside account in an amount no greater than the number representing the unit's CPPTE. The reservation request must be submitted prior to May 1st of the control period to which the reservation request pertains. The department will not consider any request for the reservation of CAIR NO<sub>x</sub> Ozone Season allowances that is submitted prior to the issuance to the CAIR NO<sub>x</sub> Ozone Season unit of all permits and authorizations by the department that are necessary for operation of the CAIR NO<sub>x</sub> Ozone Season unit. The reservation request must include information detailing the CPPTE of the CAIR NO<sub>x</sub> Ozone Season unit.

(5) Subject to the number of CAIR NO<sub>x</sub> Ozone Season allowances allocated to each new unit set-aside account, following department approval of the request for reservation of CAIR NO<sub>x</sub> Ozone Season allowances, the department will reserve CAIR NO<sub>x</sub> Ozone Season allowances in the CAIR NO<sub>x</sub> Ozone Season new unit set-aside account for each control period preceding the control period for which the CAIR NO<sub>x</sub> Ozone Season unit will receive an allocation pursuant to subdivision (b), (c), (d), or (e) of this section in an amount no greater than the CAIR NO<sub>x</sub> Ozone Season unit's CPPTE.

(6) If more than one CAIR NO<sub>x</sub> Ozone Season unit requests the reservation of CAIR NO<sub>x</sub> Ozone Season allowances and the number of requested allowances exceeds the allocation to the relevant CAIR NO<sub>x</sub> Ozone Season new unit set-aside account, the department will reserve CAIR NO<sub>x</sub> Ozone Season allowances from the account for the units in the order in which the CAIR NO<sub>x</sub> Ozone Season units submitted approvable reservation requests. For the purposes of this paragraph, requests will be considered simultaneous if they are made in the same calendar quarter. Should approvable reservation requests in excess of the allocation to the relevant CAIR NO<sub>x</sub> Ozone Season new unit set-aside account be submitted in the same calendar quarter by different CAIR NO<sub>x</sub> Ozone Season units, the department will reserve CAIR NO<sub>x</sub> Ozone Season allowances for those units on a basis proportional to the number of CAIR NO<sub>x</sub> Ozone Season allowances requested by each CAIR NO<sub>x</sub> Ozone Season unit.

(7) By July 31st of each year, the department will submit a request to the administrator, in a format prescribed by the administrator, to transfer reserved CAIR NO<sub>x</sub> Ozone Season allowances to the compliance account of the CAIR NO<sub>x</sub> Ozone Season source that includes the relevant CAIR NO<sub>x</sub> Ozone Season unit in an amount no greater than the number representing the unit's CPPTE.

(8) Flowback of undistributed CAIR NO<sub>x</sub> Ozone Season allowances from the new unit sector set-aside allocations. After making the deductions for compliance under section 243-6.5(b) or (d) of this Part for a control period, the department will determine whether any CAIR NO<sub>x</sub> Ozone Season allowances remain in the CAIR NO<sub>x</sub> Ozone Season new unit set-aside account for the control period. By the March 31st following the control period, and subject to the condition that the number of CAIR NO<sub>x</sub> Ozone Season allowances that will be transferred to the compliance account covering an existing CAIR NO<sub>x</sub> Ozone Season unit will not cause the unit's total allocation for the control period to exceed its CPPTE, the department will transfer any remaining CAIR NO<sub>x</sub> Ozone Season allowances from the CAIR NO<sub>x</sub> Ozone Season new unit set-aside account to the pertinent compliance account of each existing CAIR NO<sub>x</sub> Ozone Season unit that was allocated CAIR NO<sub>x</sub> Ozone Season allowances pursuant to subdivision (b), (c), (d), or (e) of this section using the methodology:

Existing CAIR NO<sub>x</sub> Ozone Season unit's share of CAIR NO<sub>x</sub> Ozone Season allowances remaining in the relevant CAIR NO<sub>x</sub> Ozone Season new unit set-aside account = Total CAIR NO<sub>x</sub> Ozone Season allowances remaining in the CAIR NO<sub>x</sub> Ozone Season new unit set-aside account × (the individual CAIR NO<sub>x</sub> Ozone Season unit's CAIR NO<sub>x</sub> Ozone Season allowance allocation determined in accordance with subdivision [b], [c], [d], or [e] of this section ÷ 85 percent of the CAIR NO<sub>x</sub> Ozone Season Trading Program budget)

Where:

*Total CAIR NO<sub>x</sub> Ozone Season allowances remaining in the CAIR NO<sub>x</sub> Ozone Season new unit set-aside account* is the total number of CAIR NO<sub>x</sub> Ozone Season allowances remaining in the CAIR NO<sub>x</sub> Ozone Season new unit set-aside account (established under paragraph [1] of this subdivision) for the particular control period to which the CAIR NO<sub>x</sub> Ozone Season new unit set-aside allocation applies; and

*The individual CAIR NO<sub>x</sub> Ozone Season unit's CAIR NO<sub>x</sub> Ozone Season allowance allocation* is the number of CAIR NO<sub>x</sub> Ozone Season allowances allocated under subdivision (b), (c), (d), or (e) of this section to the individual CAIR NO<sub>x</sub> Ozone Season unit for the control period to which the CAIR NO<sub>x</sub> Ozone Season new unit set-aside allocation applies.

*Note:* In this flowback methodology the CPSTE limitation under this subdivision may affect some units sooner than others leaving some CAIR NO<sub>x</sub> Ozone Season allowances unallocated after the methodology is first performed. Thus, this methodology may be performed more than once in order to allocate all remaining unassigned CAIR NO<sub>x</sub> Ozone Season allowances.

The department will transfer CAIR NO<sub>x</sub> Ozone Season allowances only in whole ton increments. Following the department's completion of the flowback methodology for a particular control period, the department will combine all fractional shares of CAIR NO<sub>x</sub> Ozone Season allowances that have been allocated to the pertinent compliance accounts. The resulting number of whole allowances resulting from this combination will then be individually allocated CAIR NO<sub>x</sub> Ozone Season units with the first allowance being allocated to the unit having the largest fractional share, the second allowance being allocated to the unit having the next largest fractional share, and so on until all whole allowances are allocated.

(g) *Energy efficiency and renewable energy technology account.* (1) The department will allocate 10 percent of the CAIR NO<sub>x</sub> Ozone Season Trading Program budget to the energy efficiency and renewable energy technology account.

(2) Should the New York State Energy Research and Development Authority fail to, or be unable to, receive CAIR NO<sub>x</sub> Ozone Season allowances into the energy efficiency and renewable energy technology account for any control period, the department will allocate this 10 percent of the CAIR NO<sub>x</sub> Ozone Season Trading Program budget pursuant to the provisions of subdivisions (b), (c), (d), and (e) of this section, at which point the 85 percent figures set forth in subdivisions (b), (c), (d), (e), and (f) of this section will each be deemed to be 95 percent.

(3) Should the New York State Energy Research and Development Authority fail to, or be unable to, sell or distribute CAIR NO<sub>x</sub> Ozone Season allowances that have been allocated to the energy efficiency and renewable energy technology account within 12 months of the date the CAIR NO<sub>x</sub> Ozone Season allowances are allocated under paragraph (1) of this subdivision, all subject CAIR NO<sub>x</sub> Ozone Season allowances remaining in the account will be forfeited to the department and then reallocated by the department to existing CAIR NO<sub>x</sub> Ozone Season units in accordance with the methodology set forth below.

By March 31st following the forfeiture of the allowances to the department, and subject to the condition that the number of CAIR NO<sub>x</sub> Ozone Season allowances that will be transferred to the compliance account covering an existing CAIR NO<sub>x</sub> Ozone Season unit will not cause the unit's total allocation for the control period to exceed its CPSTE, the department will transfer any subject CAIR NO<sub>x</sub> Ozone Season allowances from the energy efficiency and renewable energy technology account to the pertinent compliance account of each existing

CAIR NO<sub>x</sub> Ozone Season unit that was allocated CAIR NO<sub>x</sub> Ozone Season allowances pursuant to subdivision (b), (c), (d), or (e) of this section using the following methodology:

Existing CAIR NO<sub>x</sub> Ozone Season unit's share of subject CAIR NO<sub>x</sub> Ozone Season allowances in the energy efficiency and renewable energy technology account = Total subject CAIR NO<sub>x</sub> Ozone Season allowances remaining in the energy efficiency and renewable energy technology account × (the individual CAIR NO<sub>x</sub> Ozone Season unit's CAIR NO<sub>x</sub> Ozone Season allowance allocation determined in accordance with subdivision [b], [c], [d], or [e] of this section ÷ 85 percent of the CAIR NO<sub>x</sub> Ozone Season Trading Program budget)

Where:

*Total subject CAIR NO<sub>x</sub> Ozone Season allowances remaining in the energy efficiency and renewable energy technology account* is the total number of CAIR NO<sub>x</sub> Ozone Season allowances remaining in the energy efficiency and renewable energy technology account that were allocated for a particular control period under subdivision (1) of this subdivision; and

*The individual CAIR NO<sub>x</sub> Ozone Season unit's CAIR NO<sub>x</sub> Ozone Season allowance allocation* is the number of CAIR NO<sub>x</sub> Ozone Season allowances allocated under subdivision (a) or (b) of this section to the individual CAIR NO<sub>x</sub> Ozone Season unit for same control period.

*Note:* In this flowback methodology the CPTE limitation under this subdivision may affect some units sooner than others leaving some CAIR NO<sub>x</sub> Ozone Season allowances unallocated after the methodology is first performed. Thus, this methodology may be performed more than once in order to allocate all remaining unassigned CAIR NO<sub>x</sub> Ozone Season allowances.

The department will transfer CAIR NO<sub>x</sub> Ozone Season allowances only in whole ton increments. Following the department's completion of the flowback methodology for a particular control period, the department will combine all fractional shares of CAIR NO<sub>x</sub> Ozone Season allowances that have been allocated to the pertinent compliance accounts. The resulting number of whole allowances resulting from this combination will then be individually allocated CAIR NO<sub>x</sub> Ozone Season units with the first allowance being allocated to the unit having the largest fractional share, the second allowance being allocated to the unit having the next largest fractional share, and so on until all whole allowances are allocated.

**Historical Note**

Sec. filed Sept. 19, 2007 eff. 30 days after filing.