

SUBPART 243-6**CAIR NO_x OZONE SEASON ALLOWANCE TRACKING SYSTEM**

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Historical Note

Subpart (§§ 243-6.2—243-6.8) filed Sept. 19, 2007 eff. 30 days after filing.

§ 243-6.2 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in section 243-9.5(e) of this Part, upon receipt of a complete certificate of representation under section 243-2.4 of this Part, the administrator will establish a compliance account for the CAIR NO_x Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts.* (1) Application for general account.

(i) (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

(a) name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(b) organization name and type of organization, if applicable;

(c) a list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account;

(d) the following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season 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;" and

(e) the signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the department or the administrator, documents of agreement referred to in the application for a general account shall not be submitted to the

department or the administrator. Neither the department nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.

(i) Upon receipt by the administrator of a complete application for a general account under paragraph (1) of this subdivision:

(a) The administrator will establish a general account for the person or persons for whom the application is submitted.

(b) The CAIR authorized account representative and any alternate CAIR 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 CAIR NO_x Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the administrator or a court regarding the general account.

(c) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x Ozone Season 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."

(iii) The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subparagraph (ii) of this paragraph.

(3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.

(i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (1) of this subdivision. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under paragraph (1) of this subdivision. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the administrator

receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

(iii) (a) In the event a person having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the administrator or a court, as if the person were included in such list.

(b) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR 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 CAIR NO_x Ozone Season allowances in the general account to include the change.

(4) Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (1) of this subdivision has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (1) of this subdivision is received by the administrator.

(ii) Except as provided in subparagraph (3)(i) or (ii) of this subdivision, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the administrator under the CAIR NO_x Ozone Season Trading Program.

(iii) The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.

(5) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.

(i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under this Subpart and Subpart 243-7 of this Part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the administrator provided for or required under this Subpart and Subpart 243-7 of this Part.

(iii) In order to delegate authority to make an electronic submission to the administrator in accordance with subparagraph (i) or (ii) of this paragraph, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the administrator a notice of delegation, in a format prescribed by the administrator, that includes the following elements:

(a) the name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(b) the name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an "agent");

(c) for each such natural person, a list of the type or types of electronic submissions under subparagraph (i) or (ii) of this paragraph for which authority is delegated to him or her;

(d) the following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 6 NYCRR section 243-6.2(b)(5)(iv) shall be deemed to be an electronic submission by me."; and

(e) the following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: "Until this notice of delegation is superseded by another notice of delegation under 6 NYCRR section 243-6.2(b)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 6 NYCRR section 243-6.2(b)(5) is terminated."

(iv) A notice of delegation submitted under subparagraph (iii) of this paragraph shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the administrator and until receipt by the administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in clause (iii)(d) of this paragraph and made in accordance with a notice of delegation effective under subparagraph (iv) of this paragraph shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) *Account identification.* The administrator will assign a unique identifying number to each account established under subdivision (a) or (b) of this section.

Historical Note

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

§ 243-6.3 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Ozone Season Allowance Tracking System account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

Historical Note

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

§ 243-6.4 Recordation of CAIR NO_x Ozone Season allowance allocations.

(a) By September 30, 2007, the administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the department in accordance with section 243-5.2(a) of this Part, for the control periods in 2009, 2010, and 2011.

(b) By December 1, 2008, and December 1 of each year thereafter, the administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the department in accordance with section 243-5.2(b) of this Part, for the control period in the fourth year after the applicable deadline for recordation under this paragraph.

(c) By September 1, 2009 and September 1 of each year thereafter, the administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the department in accordance with section 243-5.3(f)(7) of this Part for the control period in the year of the applicable deadline for recordation under this subdivision.

(d) *Serial numbers for allocated CAIR NO_x Ozone Season allowances.* When recording the allocation of CAIR NO_x Ozone Season allowances for a CAIR NO_x Ozone Season unit in a compliance account, the administrator will assign each CAIR NO_x Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x Ozone Season allowance is allocated.

Historical Note

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

§ 243-6.5 Compliance with CAIR NO_x Ozone Season emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_x Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_x Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_x Ozone Season allowances:

- (1) were allocated for the control period in the year or a prior year; and
- (2) are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x Ozone Season allowance transfer correctly submitted for recordation under sections 243-7.1 and 243-7.2 of this Part by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with section 243-7.2 of this Part, of CAIR NO_x Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the administrator will deduct from the compliance account CAIR NO_x Ozone Season allowances available under subdivision (a) of this section in order to determine whether the source meets the CAIR NO_x Ozone Season emissions limitation for the control period, as follows:

- (1) until the amount of CAIR NO_x Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with Subpart 243-8 of this Part, from all CAIR NO_x Ozone Season units at the source for the control period; or
- (2) if there are insufficient CAIR NO_x Ozone Season allowances to complete the deductions in paragraph (1) of this subdivision, until no more CAIR NO_x Ozone Season allowances available under subdivision (a) of this section remain in the compliance account.

(c) (1) *Identification of CAIR NO_x Ozone Season allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subdivision (b) or (d) of this section. Such request shall be submitted to the administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the administrator, the identification of the CAIR NO_x Ozone Season source and the appropriate serial numbers.

(2) *First-in, first-out.* The administrator will deduct CAIR NO_x Ozone Season allowances under subdivision (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x Ozone Season allowances by serial number under paragraph (1) of this subdivision, on a first-in, first-out (FIFO) accounting basis in the following order:

- (i) any CAIR NO_x Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then
- (ii) any CAIR NO_x Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to Subpart 243-7 of this Part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under subdivision (b) of this section for a control period in a calendar year in which the CAIR NO_x Ozone Season source has excess emissions, the administrator will deduct from the source's compliance account an amount of CAIR NO_x Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to three times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (1) of this subdivision shall not affect the liability of the owners and operators of the CAIR NO_x Ozone Season source or the CAIR NO_x Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Act or applicable State law.

(i) For purposes of determining the number of days of a violation, if a CAIR NO_x Ozone Season source has excess emissions for a control period, each day in the control period constitutes a day in violation.

(ii) Each ton of excess emissions is a separate violation.

(e) *Recordation of deductions.* The administrator will record in the appropriate compliance account all deductions from such an account under subdivision (b) or (d) of this section and Subpart 243-9.

(f) *Administrator's action on submissions.* (1) The administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

(2) The administrator may deduct CAIR NO_x Ozone Season allowances from or transfer CAIR NO_x Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

Historical Note

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

§ 243-6.6 Banking.

(a) CAIR NO_x Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with subdivision (b) of this section.

(b) Any CAIR NO_x Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x Ozone Season allowance is deducted or transferred under sections 243-6.5, 243-6.7 of this Subpart, Subpart 243-7 or 243-9 of this Part.

Historical Note

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

§ 243-6.7 Account error.

The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Ozone Season Allowance Tracking System account. Within 10 business days of making such correction, the administrator will notify the CAIR authorized account representative for the account.

Historical Note

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

§ 243-6.8 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the administrator a request to close the account, which shall include a correctly submitted allowance transfer under sections 243-7.1 and 243-7.2 of this Part for any CAIR NO_x Ozone Season allowances in the account to one or more other CAIR NO_x Ozone Season Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x Ozone Season allowances, the administrator may notify the CAIR authorized account representative for the account that the account will be closed 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 CAIR NO_x Ozone Season allowances into the account under sections 243-7.1 and 243-7.2 of this Part or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

Historical Note

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