

**SUBPART 244-5**  
**CAIR NO<sub>x</sub> ALLOWANCE ALLOCATIONS**

Sec.	
244-5.1	CAIR NO <sub>x</sub> Annual Trading Program budgets
244-5.2	Timing requirements for CAIR NO <sub>x</sub> allowance allocations
244-5.3	CAIR NO <sub>x</sub> allowance allocations

**Historical Note**

Subpart (§§ 244-5.1—244-5.3) filed Sept. 19, 2007 eff. 30 days after filing.

**§ 244-5.1 CAIR NO<sub>x</sub> Annual Trading Program budgets.**

(a) The Phase 1 CAIR NO<sub>x</sub> Annual Trading Program budget for the 2009-2014 control periods is \$45,617 tons for each control period.

(b) The Phase 2 CAIR NO<sub>x</sub> Annual Trading Program budget for 2015 and beyond is 38,014 tons for each control period.

**Historical Note**

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**§ 244-5.2 Timing requirements for NO<sub>x</sub> 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> allowance allocations, in accordance with section 244-5.3 of this Part for the 2009, 2010 and 2011 control periods.

(b) By October 31, 2008 and October 31st of each year thereafter, the department will allocate and submit to the administrator, in a format prescribed by the administrator, CAIR NO<sub>x</sub> allowances, in accordance with section 244-5.3 of this Subpart, for the control period that commences 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> allowances in accordance with this subdivision, the department will allocate, for the applicable control period, the same number of CAIR NO<sub>x</sub> allowances as were allocated for the previous control period. Should the department's failure to allocate CAIR NO<sub>x</sub> allowances occur with respect to the allocations for the 2015 control period, each CAIR NO<sub>x</sub> unit will be allocated CAIR NO<sub>x</sub> allowances from the Phase 2 CAIR NO<sub>x</sub> Annual Trading Program budget based on the unit's proportional share of its previous allocation from the Phase 1 CAIR NO<sub>x</sub> Annual Trading Program budget.

**Historical Note**

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**§ 244-5.3 CAIR NO<sub>x</sub> allowance allocations.**

(a) For each instance that the department allocates CAIR NO<sub>x</sub> allowances for the 2009 through 2014 control periods, the department will determine the number of CAIR NO<sub>x</sub> allowances to be allocated to each CAIR NO<sub>x</sub> unit under section 244-1.4(a) of this Part that is not eligible to receive CAIR NO<sub>x</sub> allowances under subdivision (c) 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 is available, that precede the date by which the department must make the CAIR NO<sub>x</sub> allowance allocations pursuant to section 244-5.2 of this Subpart by 0.15 lb/mmBtu.

(2) Second round calculation. Determine the allocation factor by dividing the number representing 85 percent of the Phase 1 CAIR NO<sub>x</sub> Annual Trading Program 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> 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> allowances remaining in the 85 percent portion of the CAIR NO<sub>x</sub> Annual Trading Program 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> 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> allowances.

(5) The department will allocate CAIR NO<sub>x</sub> 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> 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> 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.

(b) For each instance that the department allocates CAIR NO<sub>x</sub> allowances for each control period commencing on or after January 1, 2015, the department will determine the number of CAIR NO<sub>x</sub> allowances to be allocated to each CAIR NO<sub>x</sub> unit under section 244-1.4(a) of this Part that is not eligible to receive CAIR NO<sub>x</sub> allowances under subdivision (c) 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 is available, that precede the date by which the department must make the NO<sub>x</sub> allocations pursuant to section 244-5.2(b) of this Subpart by 0.125 lb/mmBtu.

(2) Second round calculation. Determine the allocation factor by dividing the number representing 85 percent of the Phase 2 CAIR NO<sub>x</sub> Annual Trading Program 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> 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> allowances remaining in the 85 percent portion of the CAIR NO<sub>x</sub> Annual Trading Program 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> 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> allowances.

(5) The department will allocate CAIR NO<sub>x</sub> 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> 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> 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) *CAIR NO<sub>x</sub> new unit set-aside allocations.* For each control period, the department will determine CAIR NO<sub>x</sub> allowance distributions to any CAIR NO<sub>x</sub> unit under section 244-1.4 of this Part that commenced operation, or is projected to commence operation, in New York State on or after January 1, 2003, in accordance with the following procedures:

(1) The department will establish a CAIR NO<sub>x</sub> new unit set-aside allocation for each control period consisting of five percent of the New York State CAIR NO<sub>x</sub> Annual Trading Program budget set forth in section 244-5.1 of this Subpart.

(2) Only CAIR NO<sub>x</sub> units under section 244-1.4 of this Part may receive CAIR NO<sub>x</sub> allowances from the CAIR NO<sub>x</sub> new unit set-aside allocations established in paragraph (1) of this subdivision. No unit that becomes a CAIR NO<sub>x</sub> unit by opting-in under Subpart 244-9 of this Part may receive CAIR NO<sub>x</sub> allowances from these CAIR NO<sub>x</sub> new unit set-aside allocations.

(3) CAIR NO<sub>x</sub> allowances may be transferred to CAIR NO<sub>x</sub> units for no more than six consecutive control periods, starting with the control period during which the CAIR NO<sub>x</sub> 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> unit will receive an allocation pursuant to subdivision (a) or (b) of this section.

(4) The CAIR designated representative of a CAIR NO<sub>x</sub> unit may submit a written request to the department to reserve for the CAIR NO<sub>x</sub> unit, a number of CAIR NO<sub>x</sub> allowances in the relevant CAIR NO<sub>x</sub> 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 January 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> allowances that is submitted prior to the issuance to the CAIR NO<sub>x</sub> unit of all permits and authorizations by the department that are necessary for operation of the CAIR NO<sub>x</sub> unit. The reservation request must include information detailing the CPPTE of the CAIR NO<sub>x</sub> unit.

(5) Subject to the number of CAIR NO<sub>x</sub> allowances allocated to each new unit set-aside account established pursuant to paragraph (2) of this subdivision, following department approval of the request for reservation of CAIR NO<sub>x</sub> allowances, the department will reserve CAIR NO<sub>x</sub> allowances in the CAIR NO<sub>x</sub> new unit set-aside account for each control period preceding the control period for which the CAIR NO<sub>x</sub> unit will receive an allocation pursuant to subdivision (a) or (b) of this section in an amount no greater than the CAIR NO<sub>x</sub> unit's CPPTE.

(6) If more than one CAIR NO<sub>x</sub> unit requests the reservation of CAIR NO<sub>x</sub> allowances and the number of requested allowances exceeds the allocation to the relevant CAIR NO<sub>x</sub> new unit set-aside account, the department will reserve CAIR NO<sub>x</sub> allowances from the account for the units in the order in which the CAIR NO<sub>x</sub> 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> new unit set-aside account be submitted in the same calendar quarter by different CAIR NO<sub>x</sub> units, the department will reserve CAIR NO<sub>x</sub> allowances for those units on a basis proportional to the number of CAIR NO<sub>x</sub> allowances requested by each CAIR NO<sub>x</sub> unit.

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

(8) Flowback of undistributed CAIR NO<sub>x</sub> allowances from the new unit sector set-aside allocations. After making the deductions for compliance under section 244-6.5(b) or (d) of this Part for a control period, the department will determine whether any CAIR NO<sub>x</sub> allowances remain in the new unit CAIR NO<sub>x</sub> unit set-aside account for the control period. By the July 1st immediately following the control period, and subject to the condition that the number of CAIR NO<sub>x</sub> allowances that will be transferred to the compliance account covering an existing CAIR NO<sub>x</sub> 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> allowances from the CAIR NO<sub>x</sub> new unit set-aside account to the pertinent compliance account of each existing CAIR NO<sub>x</sub> unit that was allocated CAIR NO<sub>x</sub> allowances pursuant to subdivision (a) or (b) of this section using the methodology:

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

Where:

*Total CAIR NO<sub>x</sub> allowances remaining in the CAIR NO<sub>x</sub> new unit set-aside account* is the total number of CAIR NO<sub>x</sub> allowances remaining in the CAIR NO<sub>x</sub> 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> new unit set-aside allocation applies;

*the individual CAIR NO<sub>x</sub> unit's CAIR NO<sub>x</sub> allowance allocation* is the number of CAIR NO<sub>x</sub> allowances allocated under subdivision (a) or (b) of this section to the individual CAIR NO<sub>x</sub> unit for the control period to which the new CAIR NO<sub>x</sub> unit set-aside allocation applies; and

*Note:* In this flowback methodology the CPPTE limitation under this subdivision may affect some units sooner than others leaving some CAIR NO<sub>x</sub> 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> allowances.

The department will transfer CAIR NO<sub>x</sub> allowances only in whole ton increments. Following the department's completion of the flowback methodology, the department will combine all fractional shares of CAIR NO<sub>x</sub> 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> 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) *Energy efficiency and renewable energy technology account.* (1) The department will allocate 10 percent of the CAIR NO<sub>x</sub> Annual 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> 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> Annual Trading Program budget pursuant to the provisions of subdivision (a) and (b) of this section, at which point the 85 percent figures set forth in subdivisions (a), (b) and (c) 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> 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> allowances are allocated under paragraph (1) of this subdivision, all subject CAIR NO<sub>x</sub> allowances remaining in the account will be forfeited to the department and then reallocated by the department to existing CAIR NO<sub>x</sub> units in accordance with the methodology set forth below. By July 1st following the forfeiture of the allowances to the department, and subject to the condition that the number of CAIR NO<sub>x</sub> allowances that will be transferred to the compli-

ance account covering an existing CAIR NO<sub>x</sub> unit will not cause the unit's total allocation for the control period to exceed its CPPTTE, the department will transfer any subject CAIR NO<sub>x</sub> allowances from the energy efficiency and renewable energy technology account to the pertinent compliance account of each existing CAIR NO<sub>x</sub> unit that was allocated CAIR NO<sub>x</sub> allowances pursuant to subdivision (a) or (b) of this section using the following methodology:

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

Where:

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

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

*Note:* In this flowback methodology the CPPTTE limitation under this subdivision may affect some units sooner than others leaving some CAIR NO<sub>x</sub> 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> allowances.

The department will transfer CAIR NO<sub>x</sub> allowances only in whole ton increments. Following the department's completion of the flowback methodology, the department will combine all fractional shares of CAIR NO<sub>x</sub> 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> 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**

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