

**What are the assurance provisions?**

The CSAPR trading programs contain assurance provisions that help ensure that the necessary emissions reductions will occur within each CSAPR-covered state. For each state for each trading program, the state's budget plus variability limit constitutes that state's assurance level for that trading program. Each state's assurance levels for its trading programs consider the inherent variability in the state's baseline emissions from year to year. Note, however, that allowances are only allocated up to the level of a state's budget for that state's specific trading program and not to the level of the state's budget plus the variability limit.

**When are the assurance provisions triggered?**

In 2017, or any later year, if a state's total emissions from all units covered by a specific program in that year are greater than the sum of the state's budget plus variability limit for that program and year, the assurance provisions are triggered for that state, program, and year.

**Have the assurance provisions been triggered?**

As of 2021, the assurance provisions have been triggered three times: once in the 2019 control period (Mississippi) and twice in the 2020 control period (Mississippi and Missouri). All three exceedances were under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program.

**Which owners and operators must surrender additional allowances under the assurance provisions if the provisions are triggered?**

To identify which owners and operators must surrender additional allowances under the assurance provisions, EPA calculates, for each common designated representative (common DR), the common DR's assurance level and common DR's share of emissions. If, for any common DR, his or her share of emissions is greater than his or her assurance level, the owners and operators of the group of units and sources represented by that common DR must surrender additional allowances under the assurance provisions.

**What is a common designated representative (DR)?**

A common designated representative (DR) for a control period in a specific year is the individual who is designated, as of July 1 immediately following that year, through a certificate of representation, as the designated representative (not the alternate designated representative) for a group of one or more covered units and sources in a state.

**How is the common DR's assurance level calculated?**

To determine a common DR's assurance level, EPA calculates the total amount of allowance allocations to the units at sources in a specific state whose owners and operators are represented by that common DR and multiplies that sum by the quotient of the state's budget plus variability divided by the state's budget. The product of that calculation is the common DR's assurance level.

For example, assume that a state has a budget of 10,000 tons and a variability limit of 1,000 tons for the 2017 ozone season. Also assume that a common DR represents the owners and operators of units covered by the CSAPR NO<sub>x</sub> Ozone Season Program in that state, and that a total amount of 500 allowances (including allowances from the new unit set-aside) are allocated to those units for 2017. The total amount of 500 allowances is multiplied by 1.1 because 11,000 tons (the state's budget plus the state's variability limit) divided by 10,000 tons (the state's budget) equals 1.1. The resulting product is 550 allowances, which is the common DR's assurance level.

**How is the common DR's share of emissions calculated?**

The common DR's share of emissions is simply the sum of the emissions—for a specific state, program, and year—of the covered units at the sources for which that person is the common DR.

**If the assurance provisions are triggered in a specific state for a specific trading program and year and a common DR's assurance level is less than his or her share of emissions, how does EPA calculate how many additional allowances the owners and operators must surrender?**

To calculate the surrender amount for the owners and operators of a group of units and sources with a common DR when the assurance provisions are triggered, EPA calculates, for all common DRs whose assurance levels are exceeded by their respective shares of emissions, the sum of those exceedances. The exceedance of a specific common DR is then divided by the sum of the exceedances, and that quotient is then multiplied by the amount in tons by which the total emissions for the state exceeded that state's budget plus variability limit. The product of that calculation is then multiplied by two, yielding the number of additional allowances that the owners and operators of the group of units and sources must surrender under the assurance provisions.

Using numbers from the earlier example, assume that a state's CSAPR NO<sub>x</sub> Ozone Season Program budget plus variability limit is 11,000 tons (budget of 10,000 tons plus variability limit of 1,000 tons). Also assume that the total state emissions for the compliance year in question were 11,200 tons, 200 tons above the budget plus variability limit (11,200 minus 11,000).

Further assume that the owners and operators of a group of units and sources in the state have a common DR whose share of NO<sub>x</sub> ozone season emissions (i.e., the sum of the NO<sub>x</sub> ozone season emissions from the units at the sources) is 600 tons and whose assurance level (i.e., the sum of the allocations plus share of the variability limit) is 550 tons. In this case, the common DR's share of emissions exceeds the common DR's assurance level by 50 tons (600 minus 550).

Finally assume that the sum of the exceedances, for the owners and operators of all groups of units and sources with a common DR in the state for that ozone season that had exceedances, totaled 500 tons. The specific group of owners' and operators' exceedance (50 tons) is then divided by the sum of total of all the common DRs' exceedances (500 tons), yielding a quotient of 0.10. That quotient is then multiplied by the amount of tons (200 tons) by which the state's total emissions exceeded the budget plus variability, yielding a product of 20 tons (200 multiplied by 0.10). That figure is then multiplied by two, with the result that this specific group of owners and operators must surrender, through transfer into their assurance account, an additional amount of 40 allowances under the assurance provisions.

#### **What is an assurance account?**

If the assurance provisions are triggered for a state with regard to a specific program and a specific year, EPA establishes an assurance account for each group of owners and operators of a group of units and sources in the state whose common DR has an assurance level lower than his or her share of emissions with regard to that program and year. The owners and operators must use their assurance account for the surrender of additional allowances under the assurance provisions.

#### **What is the deadline by which a group of owners and operators must transfer enough allowances into their assurance account to cover deductions to be made by EPA under the assurance provisions?**

If a group of owners and operators are required to surrender allowances under the assurance provisions, they must transfer enough allowances into their assurance account no later than November 1 of the year following the control period for which the allowance surrender is being made.

#### **What vintage year allowances may be used for an allowance surrender under the assurance provisions?**

The group of owners and operators must surrender allowances of the vintage year for which the assurance provisions were triggered, any prior year, or the year immediately following the year for which the assurance provisions were triggered.

For example, assume that a group of owners and operators must surrender allowances under the assurance provisions for emissions reported in the 2019 CSAPR NO<sub>x</sub> Annual program. The owners and operators must transfer enough allowances into their assurance account by November 1, 2020, and those allowances can have vintages of 2020 or of any prior year.

**When an allowance surrender is required under the assurance provisions, does it matter to which compliance accounts the allowances to be surrendered were originally allocated? For instance, must the surrendered allowances have originally been allocated to compliance accounts in the same state whose emissions caused the surrender requirement?**

No. All that is required is that the owners and operators transfer into their assurance account the proper amount of allowances with the appropriate vintage years (as described in the immediately preceding Q & A) by the November 1 deadline. It doesn't matter to which accounts the allowances were originally allocated.

**Can EPA or the state take enforcement actions seeking discretionary penalties against the owners and operators who must surrender additional allowances under the assurance provisions?**

It is not a violation of the Clean Air Act (CAA) to be required to surrender additional allowances under the assurance provisions. Since such a surrender is not a violation of the Act, discretionary penalties under CAA section 113 do not apply. However, failure to hold the required amount of allowances in the appropriate assurance account by the November 1 deadline is a violation of the CAA.