

**PART 243****CAIR NO<sub>x</sub> OZONE SEASON TRADING PROGRAM**

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311; Energy Law, §§ 3-101, 3-103)

- Subpart 243-1 CAIR NO<sub>x</sub> Ozone Season Trading Program General Provisions
- Subpart 243-2 CAIR Designated Representative for CAIR NO<sub>x</sub> Ozone Season Sources
- Subpart 243-3 Permits
- Subpart 243-4 [Reserved]
- Subpart 243-5 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations
- Subpart 243-6 CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System
- Subpart 243-7 CAIR NO<sub>x</sub> Ozone Season Allowance Transfers
- Subpart 243-8 Monitoring and Reporting
- Subpart 243-9 CAIR NO<sub>x</sub> Ozone Season Opt-In Units

**Historical Note**

Part (§§ 243.1-243.8) refiled June 19, 1968; Part (*Traffic*, §§ 243.1-243.9) renum. Part 396, Title 9, filed Sept. 1971; new (Subparts 243-1—243-9) filed Sept. 19, 2007 eff. 30 days after filing.

**SUBPART 243-1****CAIR NO<sub>x</sub> OZONE SEASON TRADING PROGRAM GENERAL PROVISIONS**

Sec.	
243-1.1	Purpose
243-1.2	Definitions
243-1.3	Measurements, abbreviations and acronyms
243-1.4	Applicability
243-1.5	Retired unit exemption
243-1.6	Standard requirements
243-1.7	Computation of time
243-1.8	Appeal procedures

**Historical Note**

Subpart (§§ 243-1.1—243-1.8) filed Sept. 19, 2007 eff. 30 days after filing.

**§ 243-1.1 Purpose.**

This Part establishes the New York State component of the Clean Air Interstate Rule (CAIR) NO<sub>x</sub> Ozone Season Trading Program, which is designed to mitigate interstate transport of ozone and nitrogen oxides, an ozone precursor. The department authorizes the administrator to assist the department in implementing the CAIR NO<sub>x</sub> Ozone Season Trading Program by performing the functions set forth for the administrator in this Part.

**Historical Note**

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

**§ 243-1.2 Definitions.**

- (a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200 of this Title apply to this Part.
- (b) For the purposes of this Part, the following specific definitions apply:
  - (1) *Account number*. The identification number given by the administrator to each CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System account.

(2) *Acid rain emissions limitation.* A limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

(3) *Acid Rain Program.* A multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the administrator under title IV of the act and 40 CFR parts 72 through 78.

(4) *Allocate or allocation.* With regard to CAIR NO<sub>x</sub> Ozone Season allowances, the determination by a permitting authority or the administrator of the amount of such CAIR NO<sub>x</sub> Ozone Season allowances to be initially credited to a CAIR NO<sub>x</sub> Ozone Season unit, the new CAIR NO<sub>x</sub> Ozone Season unit set-aside, or other entity.

(5) *Allowance transfer deadline.* For a control period, midnight of November 30th (if it is a business day), or midnight of the first business day thereafter (if November 30th is not a business day), immediately following the control period and is the deadline by which a CAIR NO<sub>x</sub> Ozone Season allowance transfer must be submitted for recordation in a CAIR NO<sub>x</sub> Ozone Season source's compliance account in order to be used to meet the source's CAIR NO<sub>x</sub> Ozone Season emissions limitation for such control period in accordance with section 243-6.5 of this Part.

(6) *Alternate CAIR designated representative.* For a CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Subparts 243-2 and 243-9 of this Part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO<sub>x</sub> Ozone Season Trading Program. If the CAIR NO<sub>x</sub> Ozone Season source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO<sub>x</sub> Annual Trading Program. If the CAIR NO<sub>x</sub> Ozone Season source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO<sub>2</sub> Trading Program. If the CAIR NO<sub>x</sub> Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO<sub>x</sub> Ozone Season source is subject to the Mercury Reduction Program for coal-fired electric utility steam generating units (Part 246 of this Title), then this natural person shall be the same person as the owner or operator required to submit monitoring and compliance data pursuant to Part 246 of this Title.

(7) *Automated data acquisition and handling system or DAHS.* The component of the continuous emission monitoring system, or other emissions monitoring system approved for use under Subpart 243-8 of this Part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Subpart 243-8 of this Part.

(8) *Boiler.* An enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(9) *Bottoming-cycle cogeneration unit.* A cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

(10) *CAIR authorized account representative.* With regard to a general account, a responsible natural person who is authorized, in accordance with Subparts 243-2, 243-6 and 243-9 of this Part, to transfer and otherwise dispose of CAIR NO<sub>x</sub> Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

(11) *CAIR designated representative.* For a CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with Subparts 243-2 and 243-9 of this Part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO<sub>x</sub> Ozone Season Trading Program. If the CAIR NO<sub>x</sub> Ozone Season source is also a CAIR NO<sub>x</sub> source, then this natural person shall be the same person as the

CAIR designated representative under the CAIR NO<sub>x</sub> Annual Trading Program. If the CAIR NO<sub>x</sub> Ozone Season source is also a CAIR SO<sub>2</sub> source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO<sub>2</sub> Trading Program. If the CAIR NO<sub>x</sub> Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO<sub>x</sub> Ozone Season source is subject to the Mercury Reduction Program for coal-fired electric utility steam generating units (Part 246 of this Title), then this natural person shall be the same person as the owner or operator required to submit monitoring and compliance data pursuant to Part 246 of this Title.

(12) *CAIR NO<sub>x</sub> Annual Trading Program.* A multi-state nitrogen oxides air pollution control and emission reduction program, established pursuant to Part 244 of this Title and corresponding regulations in other states promulgated in accordance with 40 CFR 51.123(o)(1) or (2), along with any Federal Implementation Plan imposed by the administrator in accordance with 40 CFR 97.101-188, 40 CFR 51.123(p), and 40 CFR 52.35 as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

(13) *CAIR NO<sub>x</sub> Ozone Season allowance.* A limited authorization issued by a permitting authority or the administrator under provisions of a State Implementation Plan that are approved under 40 CFR part 51.123(aa)(1) or (2) (and [bb][1]), (bb)(2), (dd), or (ee), or under subpart EEEE of 40 CFR part 97 or 40 CFR 97.388, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO<sub>x</sub> Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO<sub>x</sub> Budget Trading Program in accordance with 40 CFR part 51.121(p) to emit one ton of nitrogen oxides during a control period, provided that the provision in 40 CFR part 51.121(b)(2)(ii)(E) shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO<sub>x</sub> Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State Implementation Plan approved under 40 CFR part 51.123(aa)(1) or (2) (and [bb][1]), (bb)(2), (dd), or (ee), or subpart EEEE of 40 CFR part 97 or 40 CFR 97.388 or under the NO<sub>x</sub> Budget Trading Program as described in the prior sentence shall not be a CAIR NO<sub>x</sub> Ozone Season allowance.

(14) *CAIR NO<sub>x</sub> Ozone Season allowance deduction or deduct CAIR NO<sub>x</sub> Ozone Season allowances.* The permanent withdrawal of CAIR NO<sub>x</sub> Ozone Season allowances by the administrator from a compliance account, e.g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO<sub>x</sub> Ozone Season units at a CAIR NO<sub>x</sub> Ozone Season source for a control period, determined in accordance with Subpart 243-8 of this Part, or to account for excess emissions.

(15) *CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System.* The system by which the administrator records allocations, deductions, and transfers of CAIR NO<sub>x</sub> Ozone Season allowances under the CAIR NO<sub>x</sub> Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(16) *CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System account.* An account in the CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO<sub>x</sub> Ozone Season allowances.

(17) *CAIR NO<sub>x</sub> Ozone Season allowances held or hold CAIR NO<sub>x</sub> Ozone Season allowances.* The CAIR NO<sub>x</sub> Ozone Season allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Subparts 243-6, 243-7, and 243-9 of this Part, in a CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System account.

(18) *CAIR NO<sub>x</sub> Ozone Season emissions limitation.* For a CAIR NO<sub>x</sub> Ozone Season source, the tonnage equivalent, in NO<sub>x</sub> emissions in a control period, of the CAIR NO<sub>x</sub> Ozone Season allowances available for deduction for the source under section 243-6.5(a) and (b) of this Part for the control period.

(19) *CAIR NO<sub>x</sub> Ozone Season Trading Program.* A multi-state nitrogen oxides air pollution control and emission reduction program established pursuant to this Part and corresponding regulations in other States promulgated in accordance with 40 CFR 51.123(aa)(1) or (2)(and(bb)(1)), (bb)(2), or (dd) along with any Federal Implementation Plan imposed by the administrator in accordance 40 CFR 97.301-388, 40 CFR 51.123(cc), and 40 CFR 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(20) *CAIR NO<sub>x</sub> Ozone Season source.* A source that includes one or more CAIR NO<sub>x</sub> Ozone Season units.

(21) *CAIR NO<sub>x</sub> Ozone Season unit.* A unit that is subject to the CAIR NO<sub>x</sub> Ozone Season Trading Program under section 243-1.4 of this Subpart and, except for purposes of section 243-1.5 of this Subpart and Subpart 243-5 of this Part, a CAIR NO<sub>x</sub> Ozone Season opt-in unit under Subpart 243-9 of this Part.

(22) *CAIR NO<sub>x</sub> source.* A source that is subject to the CAIR NO<sub>x</sub> Annual Trading Program.

(23) *CAIR permit.* The portion of the legally binding and federally enforceable written permit, issued by the department under Subpart 243-3 of this Part and Parts 201 and 621 of this Title, including any permit revisions, specifying the CAIR NO<sub>x</sub> Ozone Season Trading Program requirements applicable to a CAIR NO<sub>x</sub> Ozone Season source, to each CAIR NO<sub>x</sub> Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

(24) *CAIR SO<sub>2</sub> source.* A source that is subject to the CAIR SO<sub>2</sub> Trading Program.

(25) *CAIR SO<sub>2</sub> Trading Program.* A multi-state sulfur dioxide air pollution control and emission reduction program established pursuant to Part 245 of this Title and corresponding regulations in other states promulgated in accordance with 40 CFR 51.124(o)(1) or (2) along with any Federal implementation plan imposed by the administrator in accordance 40 CFR 97.201-288 and 40 CFR parts 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(26) *Coal.* Any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(27) *Coal-derived fuel.* Any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(28) *Coal-fired.* Combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel, during any year.

(29) *Cogeneration unit.* A stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine:

(i) having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(ii) producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

(a) for a topping-cycle cogeneration unit:

(1) useful thermal energy not less than five percent of total energy output; and

(2) useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output;

(b) for a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

(30) *Combustion turbine:*

(i) an enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(i) if the enclosed device under subparagraph (i) of this paragraph is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.

(31) Commence commercial operation. With regard to a unit:

(i) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in sections 243-1.5 of this Subpart and 243-9.5(h) of this Part.

(a) For a unit that is a CAIR NO<sub>x</sub> Ozone Season unit under section 243-1.4 of this Subpart on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph (i) of this paragraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(b) For a unit that is a CAIR NO<sub>x</sub> Ozone Season unit under section 243-1.4 of this Subpart on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph (i) of this paragraph and that is subsequently replaced by a unit at the same source (*e.g.*, re-powered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subparagraph (i) or (ii) of this paragraph as appropriate.

(ii) Notwithstanding subparagraph (i) of this paragraph and except as provided in section 243-1.5 of this Subpart, for a unit that is not a CAIR NO<sub>x</sub> Ozone Season unit under section 243-1.4 of this Subpart on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subparagraph (i) of this paragraph, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under section 243-1.4 of this Subpart.

(a) For a unit with a date for commencement of commercial operation as defined in this subparagraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(b) For a unit with a date for commencement of commercial operation as defined in this subparagraph and that is subsequently replaced by a unit at the same source (*e.g.*, re-powered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this subparagraph or subparagraph (ii) of this paragraph as appropriate.

(iii) Notwithstanding subparagraphs (i) and (ii) of this paragraph, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

(32) Commence operation.

(i) (a) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in section 243-9.5(h) of this Part.

(b) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in subparagraph (i) of this paragraph, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(c) For a unit that is replaced by a unit at the same source (*e.g.*, re-powered) after the date the unit commences operation as defined in subparagraph (i) of this paragraph, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of

operation as defined in subparagraph (i), (ii), or (iii) of this paragraph as appropriate, except as provided in section 243-9.5(h) of this Part.

(ii) Notwithstanding subparagraph (i) of this paragraph, and solely for purposes of Subpart 243-8 of this Part, for a unit that is not a CAIR NO<sub>x</sub> Ozone Season unit under section 243-1.4(a)(1)(iii), (a)(2), or (a)(3) of this Subpart on the later of November 15, 1990 or the date the unit commences operation as defined in subparagraph (i) of this paragraph and that subsequently becomes such a CAIR NO<sub>x</sub> Ozone Season unit, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under section 243-1.4(a)(1)(iii), (a)(2), or (a)(3) of this Subpart.

(a) For a unit with a date of commencement of operation as defined in this subparagraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(b) For a unit with a date for commencement of operation as defined in this subparagraph and that is subsequently replaced by a unit at the same source (e.g., re-powered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subparagraph (i) of this paragraph or this paragraph as appropriate.

(33) *Common stack.* A single flue through which emissions from two or more units are exhausted.

(34) *Compliance account.* A CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System account, established by the administrator for a CAIR NO<sub>x</sub> Ozone Season source under Subpart 243-6 or 243-9 of this Part, in which any CAIR NO<sub>x</sub> Ozone Season allowance allocations for the CAIR NO<sub>x</sub> Ozone Season units at the source are initially recorded and in which are held any CAIR NO<sub>x</sub> Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO<sub>x</sub> Ozone Season emissions limitation in accordance with section 243-6.5 of this Part.

(35) *Continuous emission monitoring system or CEMS.* The equipment required under Subpart 243-8 of this Part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR part 75. The following systems are the principal types of continuous emission monitoring systems required under Subpart 243-8 of this Part:

(i) a flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(ii) a nitrogen oxides concentration monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO<sub>x</sub> emissions, in parts per million (ppm);

(iii) a nitrogen oxides emission rate (or NO<sub>x</sub> -diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (CO<sub>2</sub> or O<sub>2</sub>) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO<sub>x</sub> concentration, in parts per million (ppm), diluent gas concentration, in percent CO<sub>2</sub> or O<sub>2</sub> and NO<sub>x</sub> emission rate, in pounds per million British thermal units (lb/mmBtu);

(iv) a moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H<sub>2</sub>O;

(v) a carbon dioxide monitoring system, consisting of a CO<sub>2</sub> pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO<sub>2</sub> emissions, in percent CO<sub>2</sub>; and

- (vi) an oxygen monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O<sub>2</sub>, in percent O<sub>2</sub>.
- (36) *Control period or ozone season.* The period beginning May 1st of a calendar year, except as provided in section 243-1.6(c)(2) of this Subpart, and ending on September 30th of the same year, inclusive.
- (37) *Control period potential to emit or CPPTE.* The maximum capacity of a CAIR NO<sub>x</sub> Ozone Season unit to emit NO<sub>x</sub> under its physical and operational design during a control period. Any physical or operational limitation on the capacity of a CAIR NO<sub>x</sub> Ozone Season unit to emit NO<sub>x</sub>, including air pollution control equipment and/or a restriction on the hours of operation, or on the type or amount of material combusted shall be treated as part of the design if the limitation is enforceable by the department.
- (i) For electricity generating units and non-electricity generating units, the CPPTE can be no greater than the number to be determined by the following:  

$$\text{CPPTE} \leq [(5/12\text{ths ABUhr} \times \text{BUER}) + (3,672 - 5/12\text{ths ABUhr}) \times \text{PER}] \times \text{MRHHI}$$
 when PER and BUER are in lb/mmBtu; or,  

$$\text{CPPTE} \leq (5/12\text{ths ABUhr} \times \text{BUER}) + (3,672 - 5/12\text{ths ABUhr}) \times \text{PER}$$
 and BUER are in lb/hr, where:  
*ABUhr* is number of hours it takes annually to combust the quantity of the backup fuel allowed under the unit's permit which, if used as the only fuel for the unit, would be the number of hours in determining the emission rate potential for the unit.  
*BUER* is the lowest emission rate applicable to the use of the backup fuel (in lb/mmBtu or lb/hr based on inlet temperature of 47.5°F) allowed under the unit's permit which, if used as the only fuel for the unit, would be the emission rate in determining the emission rate potential for the unit.  
*MRHHI* is the maximum rated hourly heat input for the unit based upon an inlet air temperature of 47.5°F for those units without temperature control.  
*PER* is the lowest emission rate applicable to the use of the primary fuel (in lb/mmBtu or lb/hr based on inlet temperature of 47.5°F) allowed under the unit's permit.
- (ii) For Portland cement kiln units, the CPPTE can be no greater than the number to be determined by the following:  

$$\text{CPPTE} \leq 3,672 \times \text{ER}$$
 where:  
*ER* is the lowest applicable emission rate (in lb/hr) allowed under the unit's permit:
- (38) *Electric generating unit.* Any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with a nameplate capacity of equal to or greater than 15 MWe producing electricity for sale.
- (39) *Emissions.* Air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the CAIR designated representative and as determined by the administrator in accordance with Subpart 245-8 of this Title.
- (40) *Energy efficiency and renewable energy technology account.* A general account that may be opened by the New York State Energy Research and Development Authority (NYSERDA) from which allowances will be sold or distributed in order to provide funds to be used to support programs that encourage and foster energy efficiency measures and renewable energy technologies and cover the reasonable costs associated with the administration and evaluation of these programs by NYSERDA.
- (41) *Excess emissions.* Any ton of nitrogen oxides emitted by the CAIR NO<sub>x</sub> Ozone Season units at a CAIR NO<sub>x</sub> Ozone Season source during a control period that exceeds the CAIR NO<sub>x</sub> Ozone Season emissions limitation for the source.
- (42) *Fossil fuel.* Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(43) Fossil fuel-fired. (i) With regard to a unit, except a unit subject to this Part pursuant to section 243-1.4(a)(1)(iii) or (3) of this Subpart, combusting any amount of fossil fuel in any calendar year.

(ii) With regard to a unit subject to this Part pursuant to section 243-1.4(a)(1)(iii), combusting fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be fossil fuel-fired as of the date, during such year, on which the unit begins combusting fossil fuel.

(44) *General account.* A CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System account, established under Subpart 243-6, that is not a compliance account.

(45) *Generator.* A device that produces electricity.

(46) *Heat input.* With regard to a specific period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the administrator by the CAIR designated representative and determined by the administrator in accordance with Subpart 243-8 of this Part, and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(47) *Heat input rate.* The amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

(48) *Life-of-the-unit, firm power contractual arrangement.* A unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(i) for the life of the unit;

(ii) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(iii) for a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(49) *Maximum design heat input.* The maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

(50) *Maximum rated hourly heat input.* A unit-specific maximum hourly heat input (in mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(51) *Monitoring system.* Any monitoring system that meets the requirements of Subpart 243-8 of this Part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75.

(52) *Most stringent State or Federal NO<sub>x</sub> emissions limitation.* With regard to a unit, the lowest NO<sub>x</sub> emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

(53) *Nameplate capacity.* Starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other

deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

(54) *Non-electric generating unit.*

A unit that is a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system that is not a Portland cement kiln or electric generating unit.

(5) *Operator.* Any person who operates, controls, or supervises a CAIR NO<sub>x</sub> Ozone Season unit or a CAIR NO<sub>x</sub> Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(56) *Owner.* Any of the following persons:

(i) with regard to a CAIR NO<sub>x</sub> Ozone Season source or a CAIR NO<sub>x</sub> Ozone Season unit at a source, respectively:

(a) any holder of any portion of the legal or equitable title in a CAIR NO<sub>x</sub> Ozone Season unit at the source or the CAIR NO<sub>x</sub> Ozone Season unit;

(b) any holder of a leasehold interest in a CAIR NO<sub>x</sub> Ozone Season unit at the source or the CAIR NO<sub>x</sub> Ozone Season unit; or

(c) any purchaser of power from a CAIR NO<sub>x</sub> Ozone Season unit at the source or the CAIR NO<sub>x</sub> Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO<sub>x</sub> Ozone Season unit; or

(ii) with regard to any general account, any person who has an ownership interest with respect to the CAIR NO<sub>x</sub> Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO<sub>x</sub> Ozone Season allowances.

(57) *Permitting authority.* The department or, for other states, the State air pollution control agency, local agency, other State agency, or other agency authorized by the administrator to issue or revise permits to meet the requirements of the CAIR NO<sub>x</sub> Ozone Season Trading Program as implemented in other states or, if no such agency has been so authorized, the administrator.

(58) *Portland cement kiln.* A system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(59) *Potential electrical output capacity.* Thirty-three percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

(60) *Receive or receipt of.* When referring to the department or the administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the department or the administrator in the regular course of business.

(61) *Recordation, record, or recorded.* With regard to CAIR NO<sub>x</sub> Ozone Season allowances, the movement of CAIR NO<sub>x</sub> Ozone Season allowances by the administrator into or between CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

(62) *Reference method.* Any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

(63) *Replacement, replace, or replaced.* With regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

(64) *Re-powered.* With regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (i) atmospheric or pressurized fluidized bed combustion;
- (ii) integrated gasification combined cycle;
- (iii) magnetohydrodynamics;
- (iv) direct and indirect coal-fired turbines;
- (v) integrated gasification fuel cells; or

(vi) as determined by the administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under subparagraphs (i) through (v) of this paragraph and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(65) *Sequential use of energy.* (i) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process.

(ii) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

(66) *Serial number.* For a CAIR NO<sub>x</sub> Ozone Season allowance, the unique identification number assigned to each CAIR NO<sub>x</sub> Ozone Season allowance by the administrator.

(67) *Solid waste incineration unit.* A stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the act.

(68) *Source.* All buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the act, a *source*, including a *source* with multiple units, shall be considered a single facility.

(69) *State.* One of the states or the District of Columbia that adopts the CAIR NO<sub>x</sub> Ozone Season Trading Program pursuant to 40 CFR 51.123(aa)(1) or (2), (bb), or (dd).

(70) *Submit or serve.* To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (i) in person;
- (ii) by United States Postal Service; or
- (iii) by other means of dispatch or transmission and delivery. Compliance with any submission or service deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(71) *Ton.* Two thousand pounds. For the purpose of determining compliance with the CAIR NO<sub>x</sub> Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with Subpart 243-8 of this Part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

(72) *Topping-cycle cogeneration unit.* A cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

(73) *Total energy input.* With regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

(74) *Total energy output.* With regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

(75) *Unit.* A stationary, fossil fuel-fired boiler or combustion turbine, other stationary, fossil fuel-fired combustion device, or Portland cement kiln.

(76) *Unit operating day.* A calendar day in which a unit combusts any fuel.

(77) *Unit operating hour or hour of unit operation.* An hour in which a unit combusts any fuel.

(78) *Useful power.* With regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

(79) *Useful thermal energy.* With regard to a cogeneration unit, thermal energy that is:

- (i) made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (ii) used in a heating application (e.g., space heating or domestic hot water heating); or
- (iii) used in a space cooling application (i.e., thermal energy used by an absorption chiller).

(80) *Utility power distribution system.* The portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

**Historical Note**

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

**§ 243-1.3 Measurements, abbreviations and acronyms.**

Measurements, abbreviations, and acronyms used in this part are defined as follows:

- (a) *Btu* - British thermal unit.
- (b) *CO<sub>2</sub>* - carbon dioxide.
- (c) *H<sub>2</sub>O* - water.
- (d) *hr* - hour or hours.
- (e) *kW* - kilowatt electrical.
- (f) *kWh* - kilowatt hour.
- (g) *lb* - pound or pounds.
- (h) *mmBtu* - million Btu.
- (i) *MWe* - megawatt electrical.
- (j) *MWh* - megawatt hour.
- (k) *NO<sub>x</sub>* - nitrogen oxides.
- (l) *O<sub>2</sub>* - oxygen.
- (m) *ppm* - parts per million.
- (n) *scfh* - standard cubic feet per hour.
- (o) *SO<sub>2</sub>* - sulfur dioxide.
- (p) *yr* - year or years.

**Historical Note**

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

**§ 243-1.4 Applicability.**

(a) Except as provided in subdivision (b) of this section, the following units shall be CAIR NO<sub>x</sub> Ozone Season units, and any source that includes one or more such units shall be a CAIR NO<sub>x</sub> Ozone Season source, subject to the requirements of this Part:

- (1) Electric generating units. (i) Any stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with a nameplate capacity of equal to or greater than 25 MWe producing electricity for sale.

(ii) If a stationary boiler or stationary combustion turbine that is not a CAIR NO<sub>x</sub> Ozone Season unit under subparagraph (i) of this paragraph begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO<sub>x</sub> Ozone Season unit as provided in subparagraph (i) of this paragraph on the first date on which it both combusts fossil fuel and serves such generator.

(iii) Any unit that is not a CAIR NO<sub>x</sub> Ozone Season unit under subparagraph (i) or (ii) of this paragraph and that, any time on or after January 1, 1995, serves a generator with a nameplate capacity equal to or greater than 15 MWe and sells any amount of electricity.

(2) *Portland cement kiln units.* Any unit that is a Portland cement kiln having a maximum design heat input equal to or greater than 250 mmBtu/hr.

(3) *Non-electricity generating units.* Any unit other than an electricity generating unit or a Portland cement kiln unit under paragraph (1) or (2) of this subdivision, respectively, which has a maximum design heat input equal to or greater than 250 mmBtu/hr. In addition, the unit identified by ORIS Code 0540880NO1PB is deemed to be a non-electricity generating unit.

(b) Units that meet the requirements set forth in subparagraph (1)(i), (2)(i), or (ii) of this subdivision shall not be CAIR NO<sub>x</sub> Ozone Season units.

(1) (i) Any unit that is a CAIR NO<sub>x</sub> Ozone Season unit under subparagraphs (a)(1)(i) and (ii) of this section:

(a) qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(b) not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (i) of this paragraph for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO<sub>x</sub> Ozone Season unit starting on the earlier of January 1st after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1st after the first calendar year during which the unit no longer meets the requirements of clause (i)(b) of this paragraph.

(2) (i) Any unit that is a CAIR NO<sub>x</sub> Ozone Season unit under subparagraphs (a)(1)(i) and (ii) of this section commencing operation before January 1, 1985:

(a) qualifying as a solid waste incineration unit; and

(b) with an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO<sub>x</sub> Ozone Season unit under paragraph (a)(1) of this section commencing operation on or after January 1, 1985:

(a) qualifying as a solid waste incineration unit; and

(b) with an average annual fuel consumption of non-fossil fuel for the first three calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (i) or (ii) of this paragraph for at least three consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO<sub>x</sub> Ozone Season unit starting on the earlier of January 1st after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1st after the first three consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) *Limited exemption for certain CAIR NO<sub>x</sub> Ozone Season units.* Notwithstanding subdivision (a) of this section, a CAIR NO<sub>x</sub> Ozone Season unit under subparagraph (a)(1)(iii) or paragraph (a)(3) of this section shall be subject only to the requirements of this subdivision if the unit has a permit that meets the requirements of paragraph (1) of this subdivision and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with subparagraphs [1][ii] and [iii] of this subdivision) that limits the unit's potential NO<sub>x</sub> mass emissions for the control period to 25 tons or less.

(1) For each control period under this subdivision, the permit must:

- (i) restrict the unit to burning only natural gas or fuel oil;
- (ii) restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO<sub>x</sub> mass emissions by the unit's maximum potential hourly NO<sub>x</sub> mass emissions;
- (iii) require that the unit's potential NO<sub>x</sub> mass emissions shall be calculated as follows:
  - (a) select the default NO<sub>x</sub> emission rate in table LM-2 of 40 CFR 75.19(c)(1)(ii) that would otherwise be applicable assuming that the unit burns only the type of fuel (*i.e.*, only natural gas or only fuel oil) that has the highest default NO<sub>x</sub> emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in subparagraph (i) of this paragraph; and
  - (b) multiply the default NO<sub>x</sub> emission rate under clause (a) of this subparagraph by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 243-1.2 of this Subpart. The department may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently;
- (iv) require that the owner or operator of the unit shall retain at the source that includes the unit, for five years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met; and
- (v) require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the department by November 1st of each year.

(2) The department will notify the administrator in writing of each unit under subdivision (a) of this section whose permit contains the fuel use restriction under subparagraph (1)(i) of this subdivision and the operating hours restriction under subparagraphs (1)(ii) and (iii) of this subdivision. The department will also notify the administrator in writing of each unit under subdivision (a) of this section whose permit is revised to remove any such restriction, whose permit includes any such restriction that is no longer applicable, or which does not comply with any such restriction.

(3) If, for any control period under this subdivision, the fuel use restriction under subparagraph (1)(i) of this subdivision or the operating hours restriction under subparagraphs (1)(ii) and (iii) of this subdivision is removed from the unit's permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under subparagraph (1)(i) of this subdivision or the operating hours restriction under subparagraphs (1)(ii) and (iii) of this subdivision, the unit shall be subject to all applicable requirements of this Part.

**Historical Note**

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

**§ 243-1.5 Retired unit exemption.**

(a) (1) Any CAIR NO<sub>x</sub> Ozone Season unit that is permanently retired and is not a CAIR NO<sub>x</sub> Ozone Season opt-in unit under Subpart 243-9 of this Part shall be exempt from the CAIR NO<sub>x</sub> Ozone Season Trading Program, except for the provisions of this section, sections 243-1.1 through 243-1.4, 243-1.6(c)(4) through (7), 243-1.7 of this Subpart, and Subparts 243-2 and 243-5 through 243-7 of this Part.

(2) The exemption under paragraph (1) of this subdivision shall become effective the day on which the CAIR NO<sub>x</sub> Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the department and shall submit a copy of the statement to the administrator. The statement shall state, in a format prescribed by the department, that the unit was permanently retired on a specific date and will comply with the requirements of subdivision (b) of this section.

(3) After receipt of the statement under paragraph (2) of this subdivision, the department will amend any permit under Subpart 243-3 of this Part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraph (1) of this subdivision and subdivision (b) of this section.

(b) *Special provisions.* (1) A unit exempt under subdivision (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The department will not allocate CAIR NO<sub>x</sub> Ozone Season allowances under Subpart 243-5 of this Part to a unit exempt under subdivision (a) of this section.

(3) For a period of five years from the date the records are created, the owners and operators of a unit exempt under subdivision (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the department or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under subdivision (a) of this section shall comply with the requirements of the CAIR NO<sub>x</sub> Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under subdivision (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under section 243-3.3 of this Part for the unit not less than 12 months before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under subdivision (a) of this section shall lose its exemption:

- (i) the date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (5) of this subdivision;
- (ii) the date on which the CAIR designated representative is required under paragraph (5) of this subdivision to submit a CAIR permit application for the unit; or
- (iii) the date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under Subpart 243-8 of this Part, a unit that loses its exemption under subdivision (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

**Historical Note**

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

**§ 243-1.6 Standard requirements.**

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO<sub>x</sub> Ozone Season source shall:

- (i) submit to the department a complete CAIR permit application under section 243-3.3 of this Part in accordance with the deadlines specified in section 243-3.2 of this Part; and
- (ii) submit in a timely manner any supplemental information that the department determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO<sub>x</sub> Ozone Season source shall have a CAIR permit issued by the department under Subpart 243-3 of this Part for the source and operate the source and the unit in compliance with such CAIR permit.

(b) *Monitoring requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source shall comply with the requirements of Subpart 243-8 of this Part.

(2) The emissions measurements recorded and reported in accordance with Subpart 243-8 of this Part shall be used to determine compliance by each CAIR NO<sub>x</sub> Ozone Season source with the CAIR NO<sub>x</sub> Ozone Season emissions limitation under subdivision (c) of this section.

(c) *Nitrogen oxides ozone season emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO<sub>x</sub> Ozone Season allowances available for compliance deductions for the control period under section 243-6.5(a) of this Part in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO<sub>x</sub> Ozone Season units at the source, as determined in accordance with Subpart 243-8 of this Part.

(2) A CAIR NO<sub>x</sub> Ozone Season unit shall be subject to the requirements under paragraph (1) of this subdivision for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under section 243-8.1(b)(1), (2), (3), or (7) of this Part and for each control period thereafter.

(3) A CAIR NO<sub>x</sub> Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (1) of this subdivision, for a control period in a calendar year before the year for which the CAIR NO<sub>x</sub> Ozone Season allowance was allocated.

(4) CAIR NO<sub>x</sub> Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System accounts in accordance with Subparts 243-6, 243-7, and 243-9 of this Part.

(5) A CAIR NO<sub>x</sub> Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO<sub>x</sub> Ozone Season Trading Program. No provision of the CAIR NO<sub>x</sub> Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under section 243-1.5 of this Subpart and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO<sub>x</sub> Ozone Season allowance does not constitute a property right.

(7) Upon recordation by the administrator under Subpart 243-6, 243-7, or 243-9 of this Part, every allocation, transfer, or deduction of a CAIR NO<sub>x</sub> Ozone Season allowance to or from a CAIR NO<sub>x</sub> Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR NO<sub>x</sub> Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO<sub>x</sub> Ozone Season emissions limitation, then:

- (1) the owners and operators of the source and each CAIR NO<sub>x</sub> Ozone Season unit at the source shall surrender the CAIR NO<sub>x</sub> Ozone Season allowances required for deduction under section 243-6.5(d)(1) of this Part and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the act or applicable State law; and

(2) each ton of such excess emissions and each day of such control period shall constitute a separate violation of this Subpart, the act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time before the end of five years, in writing by the department or the administrator.

(i) The certificate of representation under section 243-2.4 of this Part for the CAIR designated representative for the source and each CAIR NO<sub>x</sub> Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under section 243-2.4 of this Part changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with Subpart 243-8 of this Part, provided that to the extent that Subpart 243-8 provides for a three-year period for recordkeeping, the three-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO<sub>x</sub> Ozone Season Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO<sub>x</sub> Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO<sub>x</sub> Ozone Season Trading Program.

(2) The CAIR designated representative of a CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit at the source shall submit the reports required under the CAIR NO<sub>x</sub> Ozone Season Trading Program, including those under Subpart 243-8 of this Part.

(f) *Liability.* (1) Each CAIR NO<sub>x</sub> Ozone Season source and each CAIR NO<sub>x</sub> Ozone Season unit shall meet the requirements of the CAIR NO<sub>x</sub> Ozone Season Trading Program.

(2) Any provision of the CAIR NO<sub>x</sub> Ozone Season Trading Program that applies to a CAIR NO<sub>x</sub> Ozone Season source or the CAIR designated representative of a CAIR NO<sub>x</sub> Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO<sub>x</sub> Ozone Season units at the source.

(3) Any provision of the CAIR NO<sub>x</sub> Ozone Season Trading Program that applies to a CAIR NO<sub>x</sub> Ozone Season unit or the CAIR designated representative of a CAIR NO<sub>x</sub> Ozone Season unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO<sub>x</sub> Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under section 243-1.5 of this Subpart shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO<sub>x</sub> Ozone Season source or CAIR NO<sub>x</sub> Ozone Season unit from compliance with any other provision of applicable State or Federal laws and regulations, or a federally enforceable permit.

#### Historical Note

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

#### § 243-1.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO<sub>x</sub> Ozone Season Trading Program, 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, under the CAIR NO<sub>x</sub> Ozone Season Trading Program, 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, under the CAIR NO<sub>x</sub> Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

**Historical Note**

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

**§ 243-1.8 Appeal procedures.**

The appeal procedures for decisions of the administrator under the CAIR NO<sub>x</sub> Ozone Season Trading Program are set forth in 40 CFR part 78.

**Historical Note**

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