

**PART 243****CSAPR NO<sub>x</sub> OZONE SEASON GROUP 2 TRADING PROGRAM**

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 71-2103, 71-2105)

Sec.	
243.1	Applicability.
243.2	Definitions.
243.3	CSAPR NO <sub>x</sub> ozone season group 2 trading program budgets.
243.4	Timing requirements for CSAPR NO <sub>x</sub> ozone season group 2 allowance allocations.
243.5	CSAPR NO <sub>x</sub> ozone season group 2 new unit set-aside allocations.
243.6	Energy efficiency and renewable energy technology account.

**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 Part 396, Title 9, filed Sept. 1971; new (Subparts 243-1—243-9) filed Sept. 19, 2007; repealed, new (§§ 243.1-243.6) filed: Nov. 12, 2015; Dec. 3, 2018 eff. 30 days after filing.

**§ 243.1 Applicability.**

(a) This Part establishes the CSAPR NO<sub>x</sub> ozone season group 2 trading program allocation process as applicable to units in New York State with regard to the control periods of 2021 and subsequent years. Applicability for this program is defined in 40 CFR 97.804 (see Table 1, section 200.9 of this Title).

**Historical Note**

Part previously repealed; new sec. filed Nov. 12, 2015; repealed, new filed Dec. 3, 2018 eff. 30 days after filing.

**§ 243.2 Definitions.**

(a) The general definitions of Part 200 of this Title apply to this Part unless they are inconsistent with the specific definitions in subdivision (b) of this section.

(b) For the purposes of this Part, the following specific definitions apply:

(1) *Administrator* means the same as administrator in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(2) *Allocate* or *allocation*. The determination by the department, in accordance with this Part, of the amount of CSAPR NO<sub>x</sub> ozone season group 2 allowances to be initially credited, at no cost to the recipient, to:

- (i) a CSAPR NO<sub>x</sub> ozone season group 2 unit;
- (ii) a new unit set-aside;
- (iii) energy efficiency and renewable energy technology (EERET) account; or
- (iv) an entity not listed in subparagraphs (i) through (iii) of this paragraph;

(v) a CSAPR NO<sub>x</sub> ozone season group 2 unit qualifying for an initial credit, provided that, if the department initially credits zero CSAPR NO<sub>x</sub> ozone season group 2 allowances, the CSAPR NO<sub>x</sub> ozone season group 2 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR NO<sub>x</sub> ozone season group 2 allowances.

(3) *Compliance account* means the same as compliance account in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(4) *Control period* means the same as control period in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(5) *CSAPR*. Cross-State Air Pollution Rule.

(6) *CSAPR NO<sub>x</sub> ozone season group 2 allowance* means the same as CSAPR NO<sub>x</sub> ozone season group 2 allowance in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(7) *CSAPR NO<sub>x</sub> ozone season group 2 source* means the same as CSAPR NO<sub>x</sub> ozone season group 2 source in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(8) *CSAPR NO<sub>x</sub> ozone season group 2 trading program* means the same as CSAPR NO<sub>x</sub> ozone season group 2 trading program in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(9) *CSAPR NO<sub>x</sub> ozone season group 2 unit* means the same as CSAPR NO<sub>x</sub> ozone season group 2 unit in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(10) *Designated representative* means the same as designated representative in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(11) *Emissions* means the same as emissions in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(12) *EERET account*. A general account that may be opened by the New York State Energy Research and Development Authority (NYSERDA) from which allowances may 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.

(13) *General account* means the same as general account in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(14) *Indian country* means the same as Indian country in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(15) *Receive or receipt of* means the same as receive or receipt of in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(16) *Source* means the same as source in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(17) *Submit or serve* means the same as submit or serve in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

(18) *Unit* means the same as unit in 40 CFR 97.802 (see Table 1, section 200.9 of this Title).

#### Historical Note

Part previously repealed; new sec. filed Nov. 12, 2015; repealed, new filed Dec. 3, 2018 eff. 30 days after filing.

### § 243.3 CSAPR NO<sub>x</sub> ozone season group 2 trading program budgets.

(a) The CSAPR NO<sub>x</sub> ozone season group 2 trading program budget for the 2017 control period and beyond is defined in 40 CFR 97.810(a)(15) (see Table 1, section 200.9 of this Title).

(b) The department will allocate allowances in whole ton increments from the CSAPR NO<sub>x</sub> ozone season group 2 trading program budgets for the 2021 control period and beyond in the following manner:

(1) Five percent of the CSAPR NO<sub>x</sub> ozone season group 2 trading program budget will be allocated to the new unit set-aside account.

(2) Allowances totaling the average emissions for the three most recent calendar years of all CSAPR NO<sub>x</sub> ozone season group 2 units in New York State for which at least three full calendar years of emissions data are available before the allocation submission deadline for the control periods under section 243.4 of this Part will be proportionally allocated to each of such individual CSAPR NO<sub>x</sub> ozone season group 2 units. For purposes of this paragraph, emissions data indicating zero emissions will be deemed available for a unit for any reporting period for which the unit either reports zero emissions or does not report emissions data after being required to report emissions data for that reporting period or a previous reporting period.

(3) After the department allocates based on paragraphs (1) and (2) of this subdivision, the EERET account will receive the remainder of allowances from the CSAPR NO<sub>x</sub> ozone season group 2 budget except any allowances reserved for an Indian country new unit set-aside under 40 CFR 97.810(a)(15)(iii) (see Table 1, section 200.9 of this Title).

(i) The EERET account will be allocated a minimum of 10 percent of the CSAPR NO<sub>x</sub> ozone season group 2 trading program budget.

(ii) If paragraphs (1)-(3) of this subdivision result in an EERET account allocation of less than 10 percent of the CSAPR NO<sub>x</sub> ozone season group 2 trading program budget, the allowances allocated under paragraph (2) of this subdivision will be reduced proportionally by the amounts necessary to ensure that 10 percent of the CSAPR NO<sub>x</sub> ozone season group 2 trading program budget is allocated to the EERET account.

**Historical Note**

Part previously repealed; new sec. filed Nov. 12, 2015; repealed, new filed Dec. 3, 2018 eff. 30 days after filing.

**§ 243.4 Timing requirements for CSAPR NO<sub>x</sub> ozone season group 2 allowance allocations.**

(a) By June 1, 2019, the department will submit to the administrator, in a format prescribed by the administrator, the CSAPR NO<sub>x</sub> ozone season group 2 allowance allocations determined in accordance with section 243.3 of this Part for the 2021 and 2022 control periods.

(b) By June 1, 2020, the department will submit to the administrator, in a format prescribed by the administrator, the CSAPR NO<sub>x</sub> ozone season group 2 allowance allocations determined in accordance with section 243.3 of this Part for the 2023 and 2024 control periods.

(c) By June 1, 2021, and June 1st of each year thereafter, the department will submit to the administrator, in a format prescribed by the administrator, the CSAPR NO<sub>x</sub> ozone season group 2 allowance allocations determined in accordance with section 243.3 of this Part for the control period in the fourth year following the year of the submission deadline.

**Historical Note**

Part previously repealed; new sec. filed Nov. 12, 2015; repealed, new filed Dec. 3, 2018 eff. 30 days after filing.

**§ 243.5 CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside allocations.**

(a) For each control period, the department will determine distributions of CSAPR NO<sub>x</sub> ozone season group 2 allowances to any CSAPR NO<sub>x</sub> ozone season group 2 unit in New York State that did not receive an allocation for the control period pursuant to section 243.3(b)(2) of this Part (including an allocation of zero allowances), in accordance with the following procedures:

(1) The department will establish a CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside allocation for each control period not to exceed five percent of the CSAPR NO<sub>x</sub> ozone season group 2 budget set forth in section 243.3 of this Part.

(2) Only CSAPR NO<sub>x</sub> ozone season group 2 units may receive CSAPR NO<sub>x</sub> ozone season group 2 allowances from the CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside allocations established in paragraph (1) of this subdivision.

(3) CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside allowances may be transferred to CSAPR NO<sub>x</sub> ozone season group 2 units for no more than eight consecutive control periods, starting with the latter of the 2021 control period or the control period during which the CSAPR NO<sub>x</sub> ozone season group 2 unit commenced, or is projected to commence, operation and ending with the control period preceding the first control period for which the CSAPR NO<sub>x</sub> ozone season group 2 unit will receive an allocation pursuant to section 243.3(b)(2) of this Part.

(4) The designated representative of a CSAPR NO<sub>x</sub> ozone season group 2 unit must submit a written request to the department to reserve for the CSAPR NO<sub>x</sub> ozone season group 2 unit a number of CSAPR NO<sub>x</sub> ozone season group 2 allowances in the relevant CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside account in an amount no greater than the number representing the unit's potential to emit. 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 CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside allowances submitted prior to the issuance of all permits and authorizations by the department that are necessary for operation of the CSAPR NO<sub>x</sub> ozone season group 2 unit. The reservation request must include information detailing the potential to emit of the CSAPR NO<sub>x</sub> ozone season group 2 unit.

(5) Subject to the number of CSAPR NO<sub>x</sub> ozone season group 2 allowances allocated to each new unit set-aside account, following department approval of the request for reservation of CSAPR NO<sub>x</sub> ozone season group 2 allowances, the department will reserve CSAPR NO<sub>x</sub> ozone season group 2 allowances in the CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside account before the start of the control period for which the CSAPR NO<sub>x</sub> ozone season group 2 unit will receive an allocation pursuant to subdivision (a) of this section in an amount no greater than the CSAPR NO<sub>x</sub> ozone season group 2 unit's potential to emit.

(6) If more than one CSAPR NO<sub>x</sub> ozone season group 2 unit requests the reservation of CSAPR NO<sub>x</sub> ozone season group 2 allowances and the number of requested allowances exceeds the allocation to the relevant CSAPR NO<sub>x</sub> ozone season group 2 allowances from the account, the department will reserve CSAPR NO<sub>x</sub> ozone season group 2 allowances from the account for the units in the order in which the CSAPR NO<sub>x</sub> ozone season group 2 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 CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside account be submitted in the same calendar quarter by different CSAPR NO<sub>x</sub> ozone season group 2 units, the department will reserve CSAPR NO<sub>x</sub> ozone season group 2 allowances for those units on a basis proportional to the number of CSAPR NO<sub>x</sub> ozone season group 2 allowances requested by each CSAPR NO<sub>x</sub> ozone season group 2 unit.

(7) By July 1st of each year, the department will submit a request to the administrator, in a format prescribed by the administrator, to transfer reserved CSAPR NO<sub>x</sub> ozone season group 2 allowances to the compliance account of the CSAPR NO<sub>x</sub> ozone season group 2 source that includes the relevant CSAPR NO<sub>x</sub> ozone season group 2 unit in an amount no greater than the number representing the unit's potential to emit.

(8) After the administrator makes the deductions for compliance under 40 CFR 97.824 (see Table 1, section 200.9 of this Title) for a control period, the department will determine whether any CSAPR NO<sub>x</sub> ozone season group 2 allowances remain in the CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside account for the control period. By July 1st following the control period, the department will transfer any remaining CSAPR NO<sub>x</sub> ozone season group 2 allowances from the CSAPR NO<sub>x</sub> ozone season group 2 new unit set-aside account to the EERET account. Allowances transferred to the EERET account will be available for sale or other disposition in accordance with section 243.6 of this Part.

#### Historical Note

Part previously repealed; new sec. filed Nov. 12, 2015; repealed, new filed Dec. 3, 2018 eff. 30 days after filing.

### § 243.6 Energy efficiency and renewable energy technology account.

(a) The department will allocate allowances to a CSAPR NO<sub>x</sub> ozone season group 2 EERET account from the CSAPR NO<sub>x</sub> ozone season group 2 trading budget for each control period. NYSERDA is required to make all the allowances in the EERET account available for sale on the open market no later than 30 days after receipt of the allowances by the EERET account.

(b) Should NYSERDA fail to, or be unable to, receive CSAPR NO<sub>x</sub> ozone season group 2 allowances into the EERET account for any control period, the affected allowances will be forfeited to the department.

(c) Should NYSERDA fail to, or be unable to, sell or distribute CSAPR NO<sub>x</sub> ozone season group 2 allowances that have been allocated to the EERET account within 12 months of the date the CSAPR NO<sub>x</sub> ozone season group 2 allowances are allocated under subdivision (a) of this section, all subject CSAPR NO<sub>x</sub> ozone season group 2 allowances remaining in the account will be forfeited to the department.

(d) By July 1st, following the forfeiture of the allowances to the department, the department reserves the authority to retire or allocate any unused allowances on the condition that the number of CSAPR NO<sub>x</sub> ozone season group 2 allowances that will be transferred to the compliance account covering an existing CSAPR NO<sub>x</sub> ozone season group 2 unit will not cause the unit's total allocation for the control period to exceed its potential to emit. The allocation procedure set forth in section 243.3 of this Part will be used to allocate allowances forfeited to the department to CSAPR NO<sub>x</sub> ozone season group 2 units.

(e) The provisions of subdivisions (a) through (d) of this section will apply with respect to any allowances transferred by the administrator to the department for disposition in accordance with 40 CFR 97.812(b)(10)(ii) (see Table 1, section 200.9 of this Title).

**Historical Note**

Part previously repealed; new sec. filed Nov. 12, 2015; repealed, new filed Dec. 3, 2018 eff. 30 days after filing.

