SUBPART 204-5
NO_x ALLOWANCE ALLOWANCES

Sec.
204-5.1 New York State trading program budget
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Historical Note
Subpart (§§ 204-5.1—204-5.3) filed Jan. 26, 2000 eff. 30 days after filing.

§ 204-5.1 New York State trading program budget.

Except as may be modified in accordance with Subpart 204-9 of this Part, the New York State trading program budget allocated by the department is 41,350 tons for each control period.

Historical Note
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§ 204-5.2 Timing requirements for NO_x allowance allocations.

(a) By April 1, 2000, the department will submit to the administrator the NO_x allowance allocations, in accordance with section 204-5.3 of this Subpart, for the control period in 2003.

(b) By April 1, 2001 and April 1st of each year thereafter, the department will submit to the administrator the NO_x allowance allocations, in accordance with section 204-5.3 of this Subpart, for the control period in the year that is three years after the year of the applicable deadline for submission under this subdivision. If the department fails to submit to the administrator the NO_x allowance allocations in accordance with this subdivision, the administrator will allocate, for the applicable control period, the same number of NO_x allowances as were allocated for the preceding control period.

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§ 204-5.3 NO_x allowance allocations.

(a) For purposes of allocating NO_x allowances to NO_x budget units in the three sectors of NO_x budget units delineated under section 204-1.4(a) of this Part, the New York State trading program budget initial figure of 41,350 set forth in section 204-5.1 of this Subpart is divided into three sector budgets as follows:

(1) The total number NO_x allowances that may be allocated to electricity generating units under section 204-1.4(a)(1) of this Part is 30,405. This figure represents the electricity generating unit sector budget.

(2) The total number NO_x allowances that may be allocated to portland cement kiln units under section 204-1.4(a)(2) of this Part is 8,085 tons. This figure represents the portland cement kiln unit sector budget.

(3) The total number NO_x allowances that may be allocated to non-electricity generating units under section 204-1.4(a)(3) of this Part is 2,860 tons. This figure represents the non-electricity generating unit sector budget.

(b) *Electricity generating units.* Ninety-two percent of the electricity generating unit sector budget established in paragraph (a)(1) of this section is available for allocation to electricity generating units under section 204-1.4(a)(1) of this Part which are not eligible to receive NO_x allowances from the new electricity generating unit sector set-aside allocation under subdivision (e) of this section. From this 92 percent portion of the electricity generating unit sector budget, unit 002682000009 is allocated 9 NO_x allowances, unit 002682000010 is allocated 9 NO_x allowances, unit 002682000011 is allocated zero NO_x allowances, and unit 002682000010 is allocated 184 NO_x allowances. Except for units 002682000009, 002682000010,

002682000011, and 002682000012, the department will determine the number of NO_x allowances to be allocated to each electricity generating unit from this 92 percent portion of the electricity generating unit sector budget pursuant to the following procedures:

(1) First round calculation. (i) Units which have not previously received NO_x allowances from the department general account established for the distribution of NO_x allowances allocated to the new electricity generating unit sector set-aside allocation under subdivision (c) of this section. For the 2003 control period, multiply the greatest heat input experienced by the unit for any single control period during the 1995 through 1998 time frame; and for the 2004 control period and every control period thereafter, multiply the greatest heat input experienced by the unit for any single control period among the three control periods preceding the date by which the department must submit the NO_x allocations to the administrator pursuant to section 204-5.2(b) of this Subpart by:

(*a*) for units having a nameplate capacity greater than 25 MWe, 0.15 lb/mmBtu (0.17 lb/mmBtu for units 05065100BLR1, 05065100BLR2, 05065100BLR3, 05065100BLR4 and 05065100BLR5); or

(*b*) for units having a nameplate capacity greater than or equal to 15 MWe and equal to or less than 25 MWe, the greater of:

(*1*) 0.15 lb/mmBtu; or

(*2*) the lowest applicable emission rate.

(ii) Units which have previously received NO_x allowances from the department general account established for the distribution of NO_x allowances allocated to the new electricity generating unit sector set-aside allocation under subdivision (e) of this section. For every control period for which NO_x allowances will be allocated, multiply the greatest heat input experienced by the unit for any single control period among the three control periods preceding the date by which the department must submit the NO_x allocations to the administrator pursuant to section 204-5.2(b) of this Subpart by 0.15 lb/mmBtu.

(2) Second round calculation. Determine the allocation factor by dividing the total of the 92 percent portion of the electricity generating unit sector budget minus the 202 NO_x allowances for units 002682000009, 002682000010, 002682000011, and 002682000012 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 NO_x 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 NO_x allowances remaining in the 92 percent portion of the electricity generating unit sector 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 NO_x allowances may initially remain unassigned because the CPPTE limitation of subparagraph (b)(4)(i) of this section may affect some units sooner than others leaving some NO_x 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 NO_x allowances.

(c) *Portland cement kiln units.* Ninety-two percent of the portland cement kiln unit sector budget established in paragraph (a)(2) of this section is available for allocation to portland cement kiln units under section 204-1.4(a)(1) of this Part, which are not eligible to receive NO_x allowances from the new portland cement kiln unit sector set-aside allocation under subdivision (f) of this section. The department will determine the number of NO_x allowances to be allocated to individual portland cement kiln units from this 92 percent portion of the portland cement kiln unit sector budget pursuant to the following procedures:

(1) First round calculation. (i) Units which have not previously received NO_x allowances from the department general account established for the distribution of NO_x allowances allocated to the new portland cement kiln unit sector set-aside allocation under subdivision (e) of this section. For the 2003 control period, multiply the greatest clinker production rate (ton-clinker) experienced by the unit for any control period during the 1996 through 1998 time frame; and for the 2004 control period and every control period thereafter, multiply the greatest clinker production rate experienced by the unit for any control period among the three control periods preceding the date by which the department must submit the NO_x allocations to the administrator pursuant to section 204-5.2(b) of this Subpart by the greater of:

(*a*) the product of 0.7 multiplied by the unit's uncontrolled emission rate (lb/ton-clinker) as of 1995; or

(*b*) (*1*) for any long wet kiln, 6.0 lb/ton-clinker;

(*2*) for any long dry kiln, 5.1 lb/ton-clinker;

(*3*) for any preheater kiln, 3.8 lb/ton-clinker; and

(*4*) for any preheater/precalciner or precalciner kiln, 2.8 lb/ton-clinker.

(ii) Units which have previously received NO_x allowances from the department general account established for the distribution of NO_x allowances allocated to the new portland cement kiln unit sector set-aside allocation under subdivision (e) of this section. For every control period for which NO_x allowances will be allocated, multiply the greatest clinker production rate (ton-clinker) experienced by the unit for any single control period among the three control periods preceding the date by which the department must submit the NO_x allocations to the administrator pursuant to section 204-5.2(b) of this Subpart by the lesser of:

(*a*) the lowest applicable emission rate (in lb/ton-clinker); or

(*b*) (*1*) for any long wet kiln, 6.0 lb/ton-clinker;

(*2*) for any long dry kiln, 5.1 lb/ton-clinker;

(*3*) for any preheater kiln, 3.8 lb/ton-clinker; and

(*4*) for any preheater/precalciner or precalciner kiln, 2.8 lb/ton-clinker.

(2) Second round calculation. Determine the allocation factor by dividing the 92 percent portion of the portland cement kiln unit sector budget by the sum of the first round calculation results for all units.

(3) Third round calculation. Multiply the allocation factor by each unit's first round calculation result.

(4) Fourth round calculation. The number of NO_x 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 NO_x allowances remaining in the 92 percent portion of the portland cement kiln unit sector 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 NO_x allowances may initially remain unassigned because the CPPTE limitation of subparagraph (c)(4)(i) of this section may affect some units sooner than others leaving some NO_x 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 NO_x allowances.

(d) *Non-electricity generating units.* Eighty-two percent of the non-electricity generating unit sector budget established in paragraph (a)(3) of this section is available for allocation to non-electricity generating units under section 204-1.4(a)(1) of this Part which are not eligible to

receive NO_x allowances from the new non-electricity generating unit sector set-aside allocation under subdivision (e) of this section. The department will determine the number of NO_x allowances to be allocated to each non-electricity generating unit from this 82 percent portion of the non-electricity generating unit sector budget pursuant to the following procedures:

(1) First round calculation. (i) Units which have not previously received NO_x allowances from the department general account established for the distribution of NO_x allowances allocated to the new non-electricity generating unit sector set-aside allocation under subdivision (e) of this section.

(*a*) For the control periods in 2003 through 2007 NO_x allowances will be allocated as follows:

Unit No.	*NO_x allowances*
(*1*) 010025000013	125
(*2*) 010025000014	125
(*3*) 010025000015	306
(*4*) 010025000016	36
(*5*) 010025000041	268
(*6*) 010025000042	268
(*7*) 010025000043	342
(*8*) 010025000044	251
(*9*) 880024000018	53
(*10*) 054099000044	227
(*11*) 0540880NO1PB	124
(*12*) 002496BLR071	38
(*13*) 002496BLR072	38
(*14*) 002496BLR081	38
(*15*) 002496BLR082	38
(*16*) 002500BLR001	17
(*17*) 002500BLR002	17
(*18*) 002500BLR003	17
(*19*) 002500BLR004	17

(*b*) For the 2008 control period and every control period thereafter:

(*1*) if the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4 is less than or equal to 0.17 lb/mmBtu, multiply the average of the highest heat input experienced by the unit for any two control periods among the four control periods preceding the date by which the department must submit the NO_x allocations to the administrator pursuant to section 204-5.2(b) of this Subpart by 0.17 lb/mmBtu; and

(*2*) if the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4 is greater than 0.17 lb/mmBtu, multiply the average of the highest heat input experienced by the unit for any two control periods among the four control periods preceding the date by which the department must submit the NO_x allocations to the administrator pursuant to section 204-5.2(b) of this Subpart by the number resulting from multiplying the unit's uncontrolled emission rate as of 1995 by 0.4.

(ii) Units which have previously received NO_x allowances from the department general account established for the distribution of NO_x allowances allocated to the new non-electricity generating unit sector set-aside allocation under subdivision (e) of this section. For every control period for which NO_x allowances will be allocated, multiply the greatest heat input experienced by the unit for any single control period among the three control periods preceding the date by which the department must submit the NO_x allocations to the administrator pursuant to section 204-5.2(b) of this Subpart by 0.17 lb/mmBtu.

(2) Second round calculation. (i) When the sum of the first round calculation results for all non-electricity generating units is greater than or equal to the number representing the 82 percent portion of the non-electricity generating unit sector budget:

(*a*) for units covered by clause (1)(i)(*a*) or subclause (1)(i)(*b*)(*1*) of this subdivision, the allocation factor is one; and

(*b*) for units covered by subclause (1)(i)(*b*)(*2*) and subparagraph (1)(ii) of this subdivision, determine the allocation factor by dividing the total of the 82 percent portion of the non-electricity generating unit sector budget minus the sum of the first round calculation results for units covered by subclause (1)(i)(*b*)(*1*) of this subdivision by the sum of the first round calculation results for units covered by subclause (1)(i)(*b*)(*2*) and subparagraph (1)(ii) of this subdivision.

(ii) When the sum of the first round calculation results for all non-electricity generating units is less than the number representing the 82 percent portion of the non-electricity generating unit sector budget, determine the allocation factor by dividing the 82 percent portion of the non-electricity generating unit sector budget by the sum of the first round calculations for all non-electricity generating units.

(3) Third round calculation. Multiply the allocation factor by each unit's first round calculation result.

(4) Fourth round calculation. The number of NO_x 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 NO_x allowances remaining in the 82 percent portion of the non-electricity generating unit sector 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 NO_x allowances may initially remain unassigned because the CPPTE limitation of subparagraph (d)(4)(i) of this section may affect some units sooner than others leaving some NO_x 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 NO_x allowances.

(e) *New unit sector set-aside allocations.* For each control period, the department will determine NO_x allowances distributions to any NO_x budget unit under section 204-1.4 of this Part that commenced operation, or is projected to commence operation, in New York State on or after May 1, 1998, in accordance with the following procedures:

(1) The department will establish individual new unit sector set-aside allocations for each control period. These set-aside allocations are as follows:

(i) New electricity generating unit sector set-aside allocation. The new electricity generating unit set-aside allocation will consist of five percent of the electricity generating unit sector budget set forth at paragraph (a)(1) of this section.

(ii) New portland cement kiln unit sector set-aside allocation. The new portland cement kiln unit set-aside allocation will consist of five percent of the portland cement kiln unit sector budget set forth in paragraph (a)(2) of this section.

(iii) New non-electricity generating unit sector set-aside allocation. The new non-electricity generating unit set-aside allocation will consist of 15 percent of the non-electricity generating unit sector budget set forth at paragraph (a)(3) of this section.

(2) The department will open and manage individual general accounts for each of the new unit sector set-aside allocations established in paragraph (1) of this subdivision.

(3) Only NO_x budget units under section 204-1.4(a) of this Part may receive NO_x allowances from the new unit sector set-aside allocations established in paragraph (1) of

this subdivision. No unit that becomes a NO_x budget unit by opting-in under Subpart 204-9 of this Part may receive NO_x allowances from these new unit sector set-aside allocations.

(4) NO_x allowances may be transferred to NO_x budget units for no more than four control periods, starting with the control period during which the NO_x budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which the NO_x budget unit will receive an allocation pursuant to subdivision (b), (c), or (d) of this section.

(5) The NO_x authorized account representative of a NO_x budget unit may submit a written request to the department to reserve for the NO_x budget unit a number of NO_x allowances in the relevant new unit sector set-aside allocation general account in an amount no greater than the number representing the unit's CPPTE. The reservation request must be submitted prior to May 1st of the control period to which the reservation request pertains. The department will not consider any request for the reservation of NO_x allowances that is submitted prior to the issuance to the NO_x budget unit of all permits and authorizations by the department that are necessary for operation of the NO_x budget unit. The reservation request must include information detailing the CPPTE of the NO_x budget unit.

(6) Subject to the number of NO_x allowances allocated to each general account established pursuant to paragraph (2) of this subdivision, following department approval of the request for reservation of NO_x allowances, the department will reserve NO_x allowances in the relevant new unit sector set-aside allocation general account for each control period preceding the control period for which the NO_x budget unit will receive an allocation pursuant to subdivision (b), (c), or (d) of this section in an amount no greater than the NO_x budget unit's CPPTE.

(7) If more than one NO_x budget unit requests the reservation of NO_x allowances and the number of requested NO_x allowances exceeds the allocation to the relevant new unit sector set-aside allocation general account, the department will reserve NO_x allowances from the account for the units in the order in which the NO_x budget 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 new unit sector set-aside allocation general account be submitted in the same calendar quarter by different NO_x budget units, the department will reserve NO_x allowances for those units on a basis proportional to the number of NO_x allowances requested by each NO_x budget unit.

(8) By September 30th of each year, the department will transfer reserved NO_x allowances to the compliance account of the relevant NO_x budget unit in an amount no greater than the number representing the unit's CPPTE.

(9) Flowback of undistributed NO_x allowances from the new unit sector set-aside allocations. After making the deductions for compliance under section 204-6.5(b) or (e) of this Part for a control period, the department will determine whether any NO_x allowances remain in the new unit sector set-aside allocation general accounts for the control period. Subject to the condition that no NO_x allowances will be transferred to a NO_x budget unit's compliance account which are in excess of the unit's CPPTE, the department will transfer any such remaining NO_x allowances from the relevant new unit sector set-aside allocation general accounts to the compliance account of each NO_x budget unit that was allocated NO_x allowances pursuant to subdivision (b), (c), or (d) of this section using the methodology:

Existing NO_x budget unit's share of NO_x allowances remaining in the relevant new unit sector set-aside allocation general account = Total NO_x allowances remaining in the relevant new unit sector set-aside allocation general account × (the individual NO_x budget unit's NO_x allowance allocation determined in accordance with subdivision (b), (c), or (d) of this section ÷ the available portion of the relevant sector budget)

Where:

"Total NO_x allowances remaining in relevant new unit sector set-aside allocation general account" is the total number of NO_x allowances remaining in the new unit sector set-aside

allocation general account (established under paragraph [2] of this subdivision) for the particular control period and sector budget to which the new unit sector set-aside allocation applies;

"the individual NO_x budget unit's NO_x allowance allocation" is the number of NO_x allowances allocated under subdivision (b), (c), or (d) of this section to the individual NO_x budget unit for the control period to which the relevant new unit sector set-aside allocation applies; and

"available portion of the sector budget" is that portion of the relevant sector budget available for allocation to NO_x budget units under subdivision (b), (c), or (d) of this section (for example, 92 percent of the electricity generating unit sector budget is available for allocation to electricity generating units under subdivision (b) of this section).

Note: In this flowback methodology NO_x allowances may initially remain unassigned because the CPPTE limitation under this subdivision may affect some units sooner than others leaving some NO_x allowances unallocated after the methodology is first performed. Thus, this methodology may be performed more than once in order to allocate all remaining unassigned NO_x allowances.

The department will only transfer NO_x allowances in whole ton increments. The department will continue to hold any fractional shares of NO_x allowances in the name of the NO_x budget unit as banked NO_x allowances until they may be combined with other fractional shares of NO_x allowances in future years and then transferred as whole ton increments.

(f) *Energy efficiency and renewable energy set-aside allocation.* The energy efficiency and renewable energy set-aside allocation will consist of three percent of the New York State trading program budget set forth in section 204-5.1 of this Subpart. For each control period, the department will determine NO_x allowance distributions from the energy efficiency and renewable energy set-aside allocation in accordance with the following procedures.

(1) The department will open and manage a general account for the energy efficiency and renewable energy set-aside allocation for each control period.

(2) Project sponsors of any of the following types of projects in New York State may be eligible for the receipt of NO_x allowances from the energy efficiency and renewable energy set-aside allocation:

(i) end-use efficiency projects;

(ii) renewable energy projects;

(iii) in-plant energy efficiency projects; and

(iv) fossil fuel fired electricity generating units which produce electricity more efficiently than the annual average heat rate attributable to all fossil fuel fired electricity generated in New York State and non-electricity generating units which exceed a thermal efficiency greater than 80 percent.

(3) The NO_x authorized account representative of a project sponsor may submit a written request to the department to reserve a number of NO_x allowances in the relevant energy efficiency and renewable energy set-aside allocation general account. The reservation request must be submitted by July 1st after the control period for which the request is being made and must include information to assure that projects demonstrate accreditable NO_x emissions reductions or avoidances during the control period in accordance with department measurement and verification protocols.

(4) The department will give first priority in reserving NO_x allowances in the relevant energy efficiency and renewable energy set-aside allocation general account to sponsors of eligible end-use energy efficiency projects and renewable energy projects. Project sponsors of in-plant energy efficiency projects or fossil fuel fired electricity generating units which achieve an annual average heat rate that is more efficient than the annual average heat rate attributable to all fossil fuel fired electricity generated in New York State shall only have reservation requests granted after the department has satisfied all approved NO_x allowances reservation requests related to end-use energy efficiency projects and renewable energy projects.

(5) If more than one project sponsor of an end-use energy efficiency project or renewable energy project requests the reservation of NO_x allowances and the number of NO_x allowances that are subject to department approved requests exceeds the number of NO_x allowances in the relevant energy efficiency and renewable energy set-aside allocation general account, the department will reserve NO_x allowances from the account for the project sponsors in the order in which the project sponsors 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 energy efficiency and renewable energy set-aside allocation general account be submitted in the same calendar quarter by different project sponsors, the department will reserve NO_x allowances for those project sponsors on a basis proportional to the number of NO_x allowances requested by each project sponsor.

(6) If after the department has satisfied all approvable NO_x allowance reservation requests related to end-use energy efficiency projects and renewable energy projects, more than one in-plant energy efficiency project or unit which produces electricity more efficiently than the annual average heat rate attributable to all fossil fuel-fired electricity generated in New York State requests the reservation of NO_x allowances and the number of NO_x allowances that are subject to department approved reservation requests exceeds the number of NO_x allowances remaining in the energy efficiency and renewable energy set-aside allocation general account, the department will reserve NO_x allowances in the account for the project sponsors in the order in which the project sponsors 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 remaining allocation to the relevant energy efficiency and renewable energy set-aside allocation general account be submitted in the same calendar quarter by different project sponsors, the department will reserve NO_x allowances for those project sponsors on a basis proportional to the number of NO_x allowances requested by each project sponsor.

(7) Project sponsors of end-use energy efficiency projects, renewable energy projects, and/or in-plant energy efficiency projects may request the reservation of NO_x allowances for any control period, or portion thereof, that is within five years following project implementation.

(8) The department will distribute NO_x allowances from the relevant energy efficiency and renewable energy set-aside allocation general account to the general account of a project sponsor within two years from the start of the control period for which the request was made.

(9) No NO_x allowances will be reserved or distributed for the early implementation of projects. Project sponsors may receive NO_x allowances only for projects achieving accreditable NO_x emissions reductions or avoidances during control periods starting on May 1, 2003.

(10) Flowback of undistributed NO_x allowances from the energy efficiency and renewable energy set-aside allocations. After making the distributions to project sponsors under this subdivision and subject to the condition that no NO_x allowances will be transferred to a NO_x budget unit's compliance account which are in excess of the unit's CPPTE, the department will transfer any remaining NO_x allowances from the relevant energy efficiency and renewable energy set-aside allocation general account to the compliance account of each NO_x budget unit that was allocated NO_x allowances pursuant to subdivision (b), (c), or (d) of this section using the following:

Existing NO_x budget unit's share of NO_x allowances remaining in the energy efficiency and renewable energy set-aside allocation general account = total NO_x allowances remaining in the energy efficiency and renewable energy set-aside allocation general account × (the individual NO_x budget unit's NO_x allowance allocation ÷ the sum of available portions of the sector budget)

Where:

"Total NO_x allowances remaining in energy efficiency and renewable energy set-aside allocation general account" is the total number of NO_x allowances remaining in the energy efficiency and renewable energy set-aside allocation general account (established under paragraph

[f] of this section) for the particular control period and sector budget to which the set-aside allocation applies;

"the individual NO_x budget unit's NO_x allowance allocation" is the number of NO_x allowances allocated under subdivision (b), (c) or (d) of this section to the individual NO_x budget unit for the control period to which the energy efficiency and renewable energy set-aside allocation applies; and

"available portion of the sector budget" is that portion of the relevant sector budget available for allocation to NO_x budget units under subdivision (b), (c), or (d) of this section (for example, 92 percent of the electricity generating unit sector budget is available for allocation to electricity generating units under subdivision [b] of this section).

Note: In this flowback methodology NO_x allowances may initially remain unassigned because the CPPTE limitation under this subdivision may affect some units sooner than others leaving some NO_x allowances unallocated after the methodology is first performed. Thus, this methodology may be performed more than once in order to allocate all remaining unassigned NO_x allowances.

The department will only transfer NO_x allowances in whole ton increments. The department will continue to hold any fractional shares of NO_x allowances in the name of the NO_x budget unit as banked NO_x allowances until they may be combined with other fractional shares of NO_x allowances in future years and then transferred as whole ton increments.

(g) *Compliance supplement pool.* The department will distribute no more than 2,370 NO_x allowances from the compliance supplement pool established by the administrator under 40 CFR 51.121 in accordance with the following procedures:

(1) For all NO_x budget units which are also budget sources under the provisions of subpart 227-3 of this Title, the department will determine the total number of banked NO_x allowances of 2000, 2001 and 2002 vintage existing in accounts held by all of those budget sources by April 1, 2003.

(2) If the total number of banked NO_x allowances determined pursuant to paragraph (1) of this subdivision is equal to or less than 2,370, the department will distribute one NO_x allowance from the compliance supplement pool to the compliance account of each NO_x budget unit for each banked NO_x allowance remaining in the accounts of that unit held pursuant to the provisions of Subpart 227-3 of this Title.

(3) If the total number of banked NO_x allowances determined pursuant to paragraph (1) of this subdivision is greater than 2,370, the department will distribute NO_x allowances from the compliance supplement pool to the compliance accounts of each NO_x budget unit using the following:

Number of NO_x allowances distributed from the compliance supplement pool to the compliance account of each NO_x budget = number of banked NO_x allowances in accounts of NO_x budget units as budget sources under Subpart 227-3 of this Title × (2,370 ÷ total number of banked NO_x allowances in compliance accounts or compliance overdraft accounts of NO_x budget units as budget sources under Subpart 227-3 of this Title).

(4) By May 1, 2003, the department will submit to the administrator the allocations of NO_x allowances determined under paragraph (2) or (3) of this subdivision, as appropriate. The administrator will record such allocations.

(5) NO_x allowances allocations recorded under paragraph (4) of this subdivision may be deducted for compliance under section 204-6.5 of this Part for the control periods in 2003 or 2004. Notwithstanding section 204-6.6(a) of this Part, the administrator will deduct as retired any NO_x allowance that is recorded under paragraph (4) of this subdivision and is not deducted for compliance in accordance with section 204-6.5 of this Part for the control period in 2003 or 2004. NO_x allowances recorded under paragraph (4) of this subdivision are treated as banked NO_x allowances in 2004 for the purposes of section 204-6.6(a) and (b) of this Part.

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