

Vermont CO₂ Budget Trading Program

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Subchapter I. CO₂ Budget Trading Program General Provisions

22-101 Purpose.

This Chapter establishes the State of Vermont's component of the CO₂ Budget Trading Program, which is designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in an economically efficient manner.

22-102 Definitions.

The terms defined in this section shall apply to this Chapter only, and for the purposes of this Chapter shall supersede definitions contained in any other statutes or regulations.

(a) *Account number.* The identification number given by the Agency or its agent to each CO₂ Allowance Tracking System account.

(b) *Acid rain emissions limitation.* As defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Clean Air Act.

(c) *Administrator.* Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's authorized representative.

(d) *Agency.* Agency means the Agency of Natural Resources.

(e) *Allocate or allocation.* The determination by the Agency of the number of CO₂ allowances to be recorded in the consumer benefit or strategic energy purpose

account, or the general account of the sponsor of an approved CO₂ emissions offset project.

(f) *Allocation year.* A calendar year for which the Agency allocates or awards CO₂ allowances pursuant to Subchapters V and X. The allocation year of each CO₂ allowance is reflected in the unique identification number given to the allowance pursuant to subsection 22-604(b).

(g) *Attribute.* A characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.

(h) *Attribute credit.* An attribute credit represents the attributes related to one megawatt-hour of electricity generation.

(i) *Award.* A type of allocation in which the Agency determines the number of CO₂ offset allowances to be recorded in the general account of a project sponsor pursuant to 22-1007.

(j) *Automated data acquisition and handling system or DAHS.* That component of the continuous emissions monitoring system, or other emissions monitoring system approved for use under Subchapter VIII, 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 Subchapter VIII.

(k) *Billing meter.* To qualify as a billing meter, the measurement device must be used to measure electric or thermal output for commercial billing under a contract. The

facility selling the electric or thermal output must have different owners from the owners of the party purchasing the electric or thermal output.

(l) *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.

(m) *CO₂ allowance.* A limited authorization by the Agency or a participating state under the CO₂ Budget Trading Program to emit up to one ton of CO₂, subject to all applicable limitations contained in this Chapter.

(n) *CO₂ allowance deduction or deduct CO₂ allowances.* The permanent withdrawal of CO₂ allowances by the Agency or its agent from a CO₂ Allowance Tracking System compliance account to account for the number of tons of CO₂ emitted from a CO₂ budget source for a control period, determined in accordance with Subchapter VIII, or for the forfeit or retirement of CO₂ allowances as provided by this Chapter.

(o) *CO₂ allowance price.* The price for CO₂ allowances in the CO₂ Budget Trading Program for a particular time period as determined by the Agency or its agent, calculated based on a volume-weighted average of transaction prices reported to the Agency or its agent, and taking into account prices as reported publicly through reputable sources.

(p) *CO₂ allowances held or hold CO₂ allowances.* The CO₂ allowances recorded by the Agency or its agent, or submitted to the Agency or its agent for recordation, in accordance with Subchapters VI and VII, in a CO₂ Allowance Tracking System account.

(q) *CO₂ Allowance Tracking System.* The system by which the Agency or its agent records allocations, deductions, and transfers of CO₂ allowances under the CO₂

Budget Trading Program. The tracking system may also be used to track CO₂ emissions offset projects, CO₂ allowance prices and emissions from affected sources.

(r) *CO₂ Allowance Tracking System account.* An account in the CO₂ Allowance Tracking System established by the Agency or its agent for purposes of recording the allocation, holding, transferring, or deducting of CO₂ allowances.

(s) *CO₂ allowance transfer deadline.* Midnight of the March 1 occurring after the end of the relevant control period or, if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO₂ allowances must be submitted for recordation in a CO₂ budget source's compliance account in order for the source to meet the CO₂ requirements of 22-105(c) for the control period immediately preceding such deadline.

(t) *CO₂ authorized account representative.* For a CO₂ budget source and each CO₂ budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO₂ budget units at the source, in accordance with Subchapter II, to represent and legally bind each owner and operator in matters pertaining to the CO₂ Budget Trading Program or, for a general account, the natural person who is authorized, under Subchapter VI, to transfer or otherwise dispose of CO₂ allowances held in the general account.

(u) *CO₂ budget emissions limitation.* For a CO₂ budget source, the tonnage equivalent, in CO₂ emission in a control period, of the CO₂ allowances available for compliance deduction for the source for a control period.

(v) *CO₂ budget permit.* The portion of the legally binding permit issued by the Agency pursuant to the State of Vermont's Air Pollution Control Regulations to a CO₂ budget source or CO₂ budget unit which specifies the CO₂ Budget Trading Program

requirements applicable to the CO₂ budget source, to each CO₂ budget unit at the CO₂ budget source, and to the owners and operators and the CO₂ authorized account representative of the CO₂ budget source and each CO₂ budget unit.

(w) *CO₂ budget source.* A source that includes one or more CO₂ budget units.

(x) *CO₂ Budget Trading Program.* A multi-state CO₂ air pollution control and emissions reduction program established pursuant to this Chapter and corresponding regulations in other states as a means of reducing emissions of CO₂ from CO₂ budget sources.

(y) *CO₂ budget unit.* A unit that is subject to the CO₂ Budget Trading Program requirements under section 22-104.

(z) *CO₂ equivalent.* The quantity of a given greenhouse gas multiplied by its global warming potential (GWP).

(aa) *CO₂ offset allowance.* A CO₂ allowance that is awarded to the sponsor of a CO₂ emissions offset project pursuant to section 22-1007 and is subject to the relevant compliance deduction limitations of section 22-605(a)(3).

(aa) *Combined cycle system.* A system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(ab) *Combustion turbine.* An enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), 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.

(ac) *Commence commercial operation.* With regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO₂ budget unit under section 22-104 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO₂ budget unit under section 22-104 on the date the unit commences commercial operation, the date the unit becomes a CO₂ budget unit under section 22-104 shall be the unit's date of commencement of commercial operation.

(ad) *Commence operation.* To begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO₂ budget unit under section 22-104 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO₂ budget unit under section 22-104 on the date of commencement of operation, the date the unit becomes a CO₂ budget unit under section 22-104 shall be the unit's date of commencement of operation

(ae) *Compliance account.* A CO₂ Allowance Tracking System account, established by the Agency or its agent for a CO₂ budget source under Subchapter VI, in which the CO₂ allowances for the source are recorded and in which are held CO₂ allowances available for use by the source for a control period for the purpose of meeting the CO₂ requirements of 22-105(c).

(af) *Consumer benefit or strategic energy purpose account.* A general account managed by one or more consumer trustees appointed by the Public Service Board to

receive, hold, bank, and sell CO₂ allowances in order to provide the maximum long-term benefit to Vermont electric consumers, particularly benefits that will result from accelerated and sustained investments in energy efficiency and other low-cost, low-carbon power system investments and, to the extent feasible, accomplish the goals set forth in 30 V.S.A. § 255(c)(2).

(ag) *Continuous emissions monitoring system or CEMS.* The equipment required under Subchapter VIII to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of 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 and Subchapter VIII.

(ah) *Control period.* The control period is a three-calendar-year time period, unless extended to four years upon occurrence of a stage two trigger event. The first control period is from January 1, 2009 through December 31, 2011, inclusive, provided that if a stage two trigger event occurs during the first control period, then the first control period will be extended one-year to December 31, 2012, inclusive. Each subsequent sequential three-calendar-year period is a separate control period that is subject to one one-year extension upon occurrence of a stage two trigger event during the control period. In no event may a control period be longer than four calendar years.

(ai) *Excess emissions.* Any tonnage of CO₂ emitted by a CO₂ budget source during a control period that exceeds the CO₂ budget emissions limitation for the source.

(aj) *Fossil fuel.* Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(ak) *Fossil fuel-fired.* With regard to a unit, the combustion of 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.

(al) *General account.* A CO₂ Allowance Tracking System account, established under Subchapter VI, that is not a compliance account.

(am) *Global warming potential (GWP).* A measure of the radiative efficiency (heat-absorbing ability) of a particular gas relative to that of carbon dioxide (CO₂) after taking into account the decay rate of each gas (the amount removed from the atmosphere over a given number of years) relative to that of CO₂.

(an) *Gross generation.* The electrical output (in MWe) at the terminals of the generator.

(ao) *Life-of-the-unit contractual arrangement.* A unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and/or associated energy from any specified unit pursuant to a contract:

(1) for the life of the unit;

(2) for a cumulative term of no less than 25 years, including contracts that permit an election for early termination; or

(3) for a period equal to or greater than 20 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.

(ap) *Market settling period.* The first fourteen months of any control period.

(aq) *Maximum design heat input.* The ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(ar) *Maximum potential hourly heat input.* An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

(as) *Monitoring system.* Any monitoring system that meets the requirements of Subchapter VIII, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(at) *Nameplate capacity.* The maximum electrical output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(au) *Non-CO₂ budget unit.* A unit that does not meet the applicability criteria of section 22-104.

(av) *Operator*. Any person who operates, controls, or supervises a CO₂ budget unit or a CO₂ budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

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

(1) any holder of any portion of the legal or equitable title in a CO₂ budget unit;
or

(2) any holder of a leasehold interest in a CO₂ budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO₂ budget unit; or

(3) any purchaser of power from a CO₂ budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

(4) with respect to any general account, any person who has an ownership interest with respect to the CO₂ allowances held in the general account and who is subject to the binding agreement for the CO₂ authorized account representative to represent that person's ownership interest with respect to the CO₂ allowances.

(ax) *Participating state*. A state that has established a corresponding regulation as part of the CO₂ Budget Trading Program.

(ay) *Receive or receipt of*. When referring to the Agency or its agent, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Agency or its

agent in the regular course of business.

(az) *Recordation, record, or recorded.* With regard to CO₂ allowances, the movement of CO₂ allowances by the Agency or its agent from one CO₂ Allowance Tracking System account to another.

(ba) *Serial number.* When referring to CO₂ allowances, the unique identification number assigned to each CO₂ allowance by the Agency or its agent under section 22-604(b).

(bb) *Source.* Any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant. A “source,” including a “source” with multiple units, shall be considered a single “facility.”

(bc) *Stage one threshold price.* The monetary amount, established as of the first day of each calendar year, derived annually from use of the following formula:

$$S1TP(2005+n) = S1TP(2005) \times [1 + (CPI(2005+n) - CPI(2005)) / CPI(2005)]$$

where:

“S1TP” is the stage one threshold price;

“S1TP(2005)” is \$7;

“n” is the number of years since 2005; and

“CPI” means, for purposes of the CO₂ Budget Trading Program, the U.S.

Department of Labor, Bureau of Labor Statistics unadjusted Consumer Price Index for All Urban Consumers for the U.S. city average, for All Items on the latest reference base, or if such index is no longer published, such other index as the Agency determines is appropriate. The CPI for any calendar year is the twelve-month average of the CPI published by the United States Department of Labor, as of the close of the twelve-month

period ending on August thirty-first of each calendar year.

(bd) *Stage one trigger event.* The occurrence of any twelve month period that completely transpires following the market settling period and is characterized by an average CO₂ allowance price that is equal to or greater than the stage one threshold price.

(be) *Stage two threshold price.* The monetary amount, established as of the first day of each calendar year, derived annually from use of the following formula:

$$S2TP(2005+n) = [S2TP(2005+(n-1)) \times \left[\frac{CPI(2005+(n-1)) - CPI(2005+(n-2))}{CPI(2005+(n-2))} + 0.02 \right] + S2TP(2005+(n-1))$$

where:

“S2TP” is the stage two threshold price;

"S2TP(2005)" is \$10; and

"n" is the number of years since 2005.

“CPI” means, for purposes of the CO₂ Budget Trading Program, the U.S.

Department of Labor, Bureau of Labor Statistics unadjusted Consumer Price Index for All Urban Consumers for the U.S. city average, for All Items on the latest reference base, or if such index is no longer published, such other index as the Agency determines is appropriate. The CPI for any calendar year is the twelve-month average of the CPI published by the United States Department of Labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year.

(bf) *Stage two trigger event.* The occurrence of any twelve month period that completely transpires following the market settling period and is characterized by an average CO₂ allowance price that is equal to or greater than the stage two threshold price.

(bg) *State*. A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(bh) *State of Vermont CO₂ Budget Trading Program Base Budget*. The annual amount of CO₂ tons available in the State of Vermont for allocation in a given allocation year, in accordance with the CO₂ Budget Trading Program. CO₂ offset allowances allocated to project sponsors are separate from and additional to CO₂ allowances allocated from the State of Vermont CO₂ Budget Trading Program Base Budget.

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

- (1) in person;
- (2) by United States Postal Service; or
- (3) by other means of dispatch or transmission and delivery.

Compliance with any “submission,” “service,” or “mailing” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(bj) *Ton or tonnage*. Any “short ton”, or 2,000 pounds. For the purpose of determining compliance with the CO₂ requirements of 22-105(c), total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with Subchapter VIII, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is

equal to 0.9072 metric tons.

(bk) *Twelve month period.* A period of twelve consecutive months determined on a rolling basis where a new twelve month period begins on the first day of each calendar month.

(bl) *Unit.* A fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

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

22-103 Measurements, abbreviations and acronyms.

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

(a) *CO₂-carbon dioxide.*

(b) *hr-hour.*

(c) *lb-pounds.*

(d) *MWe-megawatt electrical.*

22-104 Applicability.

Units. Any unit that, at any time on or after January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO₂

budget unit, and any source that includes one or more such units shall be a CO₂ budget source, subject to the requirements of this Chapter.

22-105 Standard requirements.

(a) *Permit requirements.*

(1) The CO₂ authorized account representative of each CO₂ budget source required to have an operating permit pursuant to the State of Vermont's Air Pollution Control Regulations and each CO₂ budget unit required to have an operating permit pursuant to the State of Vermont's Air Pollution Control Regulations shall:

(i) submit to the Agency a complete CO₂ budget permit application under section 22-303 in accordance with the deadlines specified in section 22-302; and

(ii) submit in a timely manner any supplemental information that the Agency determines is necessary in order to review the CO₂ budget permit application and issue or deny a CO₂ budget permit.

(2) The owners and operators of each CO₂ budget source required to have an operating permit pursuant to the State of Vermont's Air Pollution Control Regulations and each CO₂ budget unit required to have an operating permit pursuant to the State of Vermont's Air Pollution Control Regulations for the source shall have a CO₂ budget permit and operate the CO₂ budget source and the CO₂ budget unit at the source in compliance with such CO₂ budget permit.

(b) *Monitoring requirements.*

(1) The owners and operators and, to the extent applicable, the CO₂ authorized account representative of each CO₂ budget source and each CO₂ budget unit at the source shall comply with the monitoring requirements of Subchapter VIII.

(2) The emissions measurements recorded and reported in accordance with Subchapter VIII shall be used to determine compliance by the unit with the CO₂ requirements of subsection 22-105(c).

(c) *CO₂ requirements.*

(1) The owners and operators of each CO₂ budget source and each CO₂ budget unit at the source shall hold CO₂ allowances available for compliance deductions under section 22-605, as of the CO₂ allowance transfer deadline, in the source's compliance account in an amount not less than the total CO₂ emissions for the control period from all CO₂ budget units at the source, as determined in accordance with Subchapters VI and VIII.

(2) Each ton of CO₂ emitted in excess of the CO₂ budget emissions limitation shall constitute a separate violation of this Chapter and applicable state law.

(3) A CO₂ budget unit shall be subject to the requirements under subdivision (c)(1) of this section starting on the later, of January 1, 2009 or the date on which the unit commences operation.

(4) CO₂ allowances shall be held in, deducted from, or transferred among CO₂ Allowance Tracking System accounts in accordance with Subchapters V, VI, and VII, and section 22-1007.

(5) A CO₂ allowance shall not be deducted, in order to comply with the requirements under subdivision (c)(1) of this section, for a control period that ends prior to the year for which the CO₂ allowance was allocated. A CO₂ offset allowance shall not be deducted, in order to comply with the requirements under subdivision (c)(1) of this section, beyond the applicable percent limitations set out in subdivision 22-605(a)(3).

(6) A CO₂ allowance under the CO₂ Budget Trading Program is a limited authorization by the Agency or a participating state to emit one ton of CO₂ in accordance with the CO₂ Budget Trading Program. No provision of the CO₂ Budget Trading Program, the CO₂ budget permit application, or the CO₂ budget permit or any provision of law shall be construed to limit the authority of the Agency or a participating state to terminate or limit such authorization.

(7) A CO₂ allowance under the CO₂ Budget Trading Program does not constitute a property right.

(d) *Excess emissions requirements.* The owners and operators of a CO₂ budget source that has excess emissions in any control period shall:

(1) forfeit the CO₂ allowances required for deduction under subdivision 22-605(d)(1), provided CO₂ offset allowances may not be used to cover any part of such excess emissions; and

(2) pay any fine, penalty, or assessment or comply with any other remedy imposed under subdivision 22-605(d)(2).

(e) *Recordkeeping and reporting requirements.*

(1) Unless otherwise provided, the owners and operators of the CO₂ budget source and each CO₂ budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the Agency.

(i) The account certificate of representation for the CO₂ authorized account representative for the source and each CO₂ budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 22-204, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation changing the CO₂ authorized account representative.

(ii) All emissions monitoring information, in accordance with Subchapter VIII and 40 CFR 75.57.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO₂ Budget Trading Program.

(iv) Copies of all documents used to complete a CO₂ budget permit application and any other submission under the CO₂ Budget Trading Program or to demonstrate compliance with the requirements of the CO₂ Budget Trading Program.

(2) The CO₂ authorized account representative of a CO₂ budget source and each CO₂ budget unit at the source shall submit the reports and compliance certifications required under the CO₂ Budget Trading Program, including those under Subchapter IV.

(f) *Liability.*

(1) No permit revision shall excuse any violation of the requirements of the CO₂ Budget Trading Program that occurs prior to the date that the revision takes effect.

(2) Any provision of the CO₂ Budget Trading Program that applies to a CO₂ budget source (including a provision applicable to the CO₂ authorized account representative of a CO₂ budget source) shall also apply to the owners and operators of such source and of the CO₂ budget units at the source.

(3) Any provision of the CO₂ Budget Trading Program that applies to a CO₂ budget unit (including a provision applicable to the CO₂ authorized account representative of a CO₂ budget unit) shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.*

(1) No provision of the CO₂ Budget Trading Program, a CO₂ budget permit application, or a CO₂ budget permit, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO₂ authorized account representative of a CO₂ budget source or CO₂ budget unit from compliance with any other provisions of applicable State and federal law and regulations.

22-106 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CO₂ Budget 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 CO₂ Budget 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 CO₂ Budget Trading Program, falls on a weekend or a Vermont State or Federal holiday, the time period shall be extended to the next business day.

22-107 Severability.

If any provision of this Chapter, or its application to any particular person or circumstances, is held invalid, the remainder of this Chapter, and the application thereof to other persons or circumstances, shall not be affected thereby.

Subchapter II. CO₂ Authorized Account Representative for CO₂ Budget Sources

22-201 Authorization and responsibilities of the CO₂ authorized account representative.

(a) Except as provided under section 22-202, each CO₂ budget source, including all CO₂ budget units at the source, shall have one and only one CO₂ authorized account representative, with regard to all matters under the CO₂ Budget Trading Program concerning the source or any CO₂ budget unit at the source.

(b) The CO₂ authorized account representative of the CO₂ budget source shall be selected by an agreement binding on the owners and operators of the source and all CO₂ budget units at the source.

(c) Upon receipt by the Agency or its agent of a complete account certificate of representation under section 22-204, the CO₂ authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CO₂ budget source represented and each CO₂ budget unit at the source in all matters pertaining to the CO₂ Budget Trading Program, notwithstanding any agreement between the CO₂ authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO₂ authorized account representative by the Agency or a court regarding the source or unit.

(d) No CO₂ budget permit shall be issued, and no CO₂ Allowance Tracking System account shall be established for a CO₂ budget source, until the Agency or its agent has received a complete account certificate of representation under section 22-204 for a CO₂ authorized account representative of the source and the CO₂ budget units at the source.

(e) Each submission under the CO₂ Budget Trading Program shall be submitted, signed, and certified by the CO₂ authorized account representative for each CO₂ budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO₂ authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO₂ budget sources or CO₂ budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(f) The Agency or its agent will accept or act on a submission made on behalf of owners or operators of a CO₂ budget source or a CO₂ budget unit only if the submission has been made, signed, and certified in accordance with subsection (e) of this section.

22-202 Alternate CO₂ authorized account representative.

(a) An account certificate of representation may designate one and only one alternate CO₂ authorized account representative who may act on behalf of the CO₂ authorized account representative. The agreement by which the alternate CO₂ authorized account representative is selected shall include a procedure for authorizing the alternate CO₂ authorized account representative to act in lieu of the CO₂ authorized account representative.

(b) Upon receipt by the Agency or its agent of a complete account certificate of representation under section 22-204, any representation, action, inaction, or submission by the alternate CO₂ authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CO₂ authorized account representative.

(c) Except in this section and subsection 22-201(a), section 22-203, section 22-204, and section 22-602, whenever the term “CO₂ authorized account representative” is used in this Chapter, the term shall be construed to include the alternate CO₂ authorized account representative.

22-203 Changing the CO₂ authorized account representative and the alternate CO₂ authorized account representative; changes in the owners and operators.

(a) *Changing the CO₂ authorized account representative.* The CO₂ authorized account representative may be changed at any time upon receipt by the Agency or its agent of a superseding complete account certificate of representation under section 22-204. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO₂ authorized account representative or alternate CO₂ authorized account representative prior to the time and date when the Agency or its agent receives the superseding account certificate of representation shall be binding on the new CO₂ authorized account representative and the owners and operators of the CO₂ budget source and the CO₂ budget units at the source.

(b) *Changing the alternate CO₂ authorized account representative.* The alternate CO₂ authorized account representative may be changed at any time upon receipt by the Agency or its agent of a superseding complete account certificate of representation under section 22-204. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO₂ authorized account representative or alternate CO₂ authorized account representative prior to the time and date when the Agency or its agent receives the superseding account certificate of representation shall be binding on the new alternate CO₂ authorized account representative and the owners and operators of the CO₂ budget source and the CO₂ budget units at the source.

(c) *Changes in the owners and operators.*

(1) In the event a new owner or operator of a CO₂ budget source or a CO₂ budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the CO₂ authorized account representative and any alternate CO₂ authorized account representative of the source or unit, and the decisions,

orders, actions, and inactions of the Agency, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CO₂ budget source or a CO₂ budget unit, including the addition of a new owner or operator, the CO₂ authorized account representative or alternate CO₂ authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

22-204 Account certificate of representation.

(a) A complete account certificate of representation for a CO₂ authorized account representative or an alternate CO₂ authorized account representative shall include the following elements in a format prescribed by the Agency or its agent:

(1) identification of the CO₂ budget source and each CO₂ budget unit at the source for which the account certificate of representation is submitted;

(2) the name, address, e-mail address, telephone number, and facsimile transmission number of the CO₂ authorized account representative and any alternate CO₂ authorized account representative;

(3) a list of the owners and operators of the CO₂ budget source and of each CO₂ budget unit at the source;

(4) the following certification statement by the CO₂ authorized account representative and any alternate CO₂ authorized account representative: "I certify that I was selected as the CO₂ authorized account representative or alternate CO₂ authorized account representative, as applicable, by an agreement binding on the owners and

operators of the CO₂ budget source and each CO₂ budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO₂ Budget Trading Program on behalf of the owners and operators of the CO₂ budget source and of each CO₂ budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Agency or a court regarding the source or unit.”; and

(5) the signature of the CO₂ authorized account representative and any alternate CO₂ authorized account representative and the dates signed.

(b) Unless otherwise required by the Agency or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the Agency or its agent. Neither the Agency nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

22-205 Objections concerning the CO₂ authorized account representative.

(a) Once a complete account certificate of representation under section 22-204 has been submitted and received, the Agency and its agent will rely on the account certificate of representation unless and until the Agency or its agent receives a superseding complete account certificate of representation under section 22-204.

(b) Except as provided in subsection 22-203(a) or (b), no objection or other communication submitted to the Agency or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO₂ authorized account representative shall affect any representation, action, inaction, or submission of the CO₂ authorized account representative or the finality of any decision or order by the Agency or its agent under the CO₂ Budget Trading Program.

(c) Neither the Agency nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CO₂ authorized account representative, including private legal disputes concerning the proceeds of CO₂ allowance transfers.

22-206 Delegation by CO₂ authorized account representative and alternate CO₂ authorized account representative

(a) A CO₂ authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Agency or its agent under this Chapter.

(b) An alternate CO₂ authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Agency or its agent under this Chapter.

(c) In order to delegate authority to make an electronic submission to the Agency or its agent in accordance with subsection (a) and (b) of this section, the CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, must submit to the Agency or its agent a notice of delegation, in a format prescribed by the Agency that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number of such CO₂ authorized account representative or alternate CO₂ authorized account representative;

(2) The name, address, e-mail address, telephone number and facsimile transmission number of each such natural person, herein referred to as the “electronic submission agent”;

(3) For each such natural person, a list of the type of electronic submissions under subsection (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CO₂ authorized account representative or alternate CO₂ authorized account representative:

(i) “I agree that any electronic submission to the Agency or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection 22-206(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under subsection 22-206(d), I agree to maintain an e-mail account and to notify the Agency or its agent immediately of any change in my e-mail address unless all delegation authority by me under section 22-206 is terminated.”

(d) A notice of delegation submitted under subsection (c) of this section shall be effective, with regard to the CO₂ authorized account representative or alternate CO₂ authorized account representative identified in such notice, upon receipt of such notice by the Agency or its agent and until receipt by the Agency or its agent of a superseding notice of delegation by such CO₂ authorized account representative or alternate CO₂ authorized account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in subdivision (c)(4)(i) of this section and made in accordance with a notice of delegation effective under subsection (d) of this section shall be deemed to be an electronic submission by the CO₂ authorized account representative or alternate CO₂ authorized account representative submitting such notice of delegation.

Subchapter III. Permits

22-301 General CO₂ budget permit requirements.

(a) Each CO₂ budget source must have a permit issued by the Agency pursuant to the State of Vermont's Air Pollution Control Regulations.

(b) Each CO₂ budget permit shall contain all applicable CO₂ Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subsection (a) of this section.

22-302 Submission of CO₂ budget permit applications.

For any CO₂ budget source, the CO₂ authorized account representative shall submit a complete CO₂ budget permit application under section 22-303 covering such CO₂ budget source to the Agency by the later of January 1, 2009 or 12 months before the date on which the CO₂ budget source, or a new unit at the source, commences operation.

22-303 Information requirements for CO₂ budget permit applications.

(a) A complete CO₂ budget permit application shall include the following elements concerning the CO₂ budget source for which the application is submitted, in a format prescribed by the Agency:

(1) identification of the CO₂ budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable;

(2) identification of each CO₂ budget unit at the CO₂ budget source; and

(3) the standard requirements under section 22-105.

Subchapter IV. Compliance Certification

22-401 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which a CO₂ budget source is subject to the CO₂ requirements of 22-105(c), the CO₂ authorized account representative of the source shall submit to the Agency by the March 1 following the relevant control period, a compliance certification report.

(b) *Contents of report.* The CO₂ authorized account representative shall include in the compliance certification report under subsection (a) of this section the following elements, in a format prescribed by the Agency:

(1) identification of the source and each CO₂ budget unit at the source;

(2) at the CO₂ authorized account representative's option, the serial numbers of the CO₂ allowances that are to be deducted from the source's compliance account under section 22-605 for the control period, including the serial numbers of any CO₂ offset allowances that are to be deducted subject to the limitations of subdivision 22-605(a)(3); and

(3) the compliance certification under subsection (c) of this section.

(c) *Compliance certification.* In the compliance certification report under subsection (a) of this section, the CO₂ authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO₂ budget units at the source in compliance with the CO₂ Budget Trading Program, whether the source and each CO₂ budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO₂ Budget Trading Program, including:

(1) whether the source was operated in compliance with the CO₂ requirements of 22-105(c);

(2) whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO₂ emissions to the unit, in accordance with Subchapter VIII;

(3) whether all the CO₂ emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Subchapter VIII. If conditional data were reported, the

owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(4) whether the facts that form the basis for certification under Subchapter VIII of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Subchapter VIII, if any, have changed; and

(5) if a change is required to be reported under subdivision (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

22-402 Agency's action on compliance certifications.

(a) The Agency or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO₂ Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Agency or its agent may deduct CO₂ allowances from or transfer CO₂ allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under subsection (a) of this section.

Subchapter V. CO₂ Allowance Allocations

22-501 State of Vermont CO₂ trading program base budget.

(a) For the 2009 through 2014 allocation years, the State of Vermont CO₂ Budget Trading Program annual base budget is 1,225,830 tons.

(b) For the 2015 allocation year, the State of Vermont CO₂ Budget Trading Program annual base budget is 1,195,184.25 tons.

(c) For the 2016 allocation year, the State of Vermont CO₂ Budget Trading Program annual base budget is 1,164,538.5 tons.

(d) For the 2017 allocation year, the State of Vermont CO₂ Budget Trading Program annual base budget is 1,133,892.75 tons.

(e) For the 2018 allocation year and each succeeding allocation year, the State of Vermont CO₂ Budget Trading Program annual base budget is 1,103,247 tons.

22-502 CO₂ allowance allocations.

For each allocation year, the Agency will allocate 100 percent of the State of Vermont CO₂ Budget Trading Program annual base budget to the consumer benefit or strategic energy purpose account.

Subchapter VI. CO₂ Allowance Tracking System

22-601 CO₂ Allowance Tracking System accounts.

(a) *Compliance accounts.* Consistent with subsection 22-602(a), the Agency or its agent will establish one compliance account for each CO₂ budget source. Deductions or transfers of CO₂ allowances pursuant to sections 22-402, 22-605, 22-607, or

Subchapter VII will be recorded in the compliance accounts in accordance with this Subchapter.

(b) *General accounts.* Consistent with subsection 22-602(b), the Agency or its agent will establish, upon request, a general account for any person. Transfers of CO₂ allowances pursuant to Subchapter VII will be recorded in the general account in accordance with this Subchapter.

22-602 Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete account certificate of representation under section 22-204, the Agency or its agent will establish a compliance account for each CO₂ budget source for which the account certificate of representation was submitted.

(b) *General accounts.*

(1) *Application for general account.* Any person may apply to open a general account for the purpose of holding and transferring CO₂ allowances. An application for a general account may designate one and only one CO₂ authorized account representative and one and only one alternate CO₂ authorized account representative who may act on behalf of the CO₂ authorized account representative. The agreement by which the alternate CO₂ authorized account representative is selected shall include a procedure for authorizing the alternate CO₂ authorized account representative to act in lieu of the CO₂ authorized account representative. A complete application for a general account shall be submitted to the Agency or its agent and shall include the following elements in a format prescribed by the Agency or its agent:

(i) name, address, e-mail address, telephone number, and

facsimile transmission number of the CO₂ authorized account representative and any alternate CO₂ authorized account representative;

(ii) at the option of the CO₂ authorized account representative, organization name and type of organization;

(iii) a list of all persons subject to a binding agreement for the CO₂ authorized account representative or any alternate CO₂ authorized account representative to represent their ownership interest with respect to the CO₂ allowances held in the general account;

(iv) the following certification statement by the CO₂ authorized account representative and any alternate CO₂ authorized account representative: "I certify that I was selected as the CO₂ authorized account representative or the CO₂ alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO₂ Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Agency or its agent or a court regarding the general account.";

(v) the signature of the CO₂ authorized account representative and any alternate CO₂ authorized account representative and the dates signed; and

(vi) unless otherwise required by the Agency or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the Agency or its agent. Neither the Agency nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CO₂ authorized account representative.*

(i) Upon receipt by the Agency or its agent of a complete application for a general account under subdivision (b)(1) of this section:

(a) The Agency or its agent will establish a general account for the person or persons for whom the application is submitted.

(b) The CO₂ authorized account representative and any alternate CO₂ authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO₂ allowances held in the general account in all matters pertaining to the CO₂ Budget Trading Program, notwithstanding any agreement between the CO₂ authorized account representative or any alternate CO₂ authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CO₂ authorized account representative or any alternate CO₂ authorized account representative by the Agency or its agent or a court regarding the general account.

(c) Any representation, action, inaction, or submission by any alternate CO₂ authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CO₂ authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CO₂ authorized account representative or any alternate CO₂ authorized account representative for the persons having an ownership interest with respect to CO₂ allowances held in the general account. Each such

submission shall include the following certification statement by the CO₂ authorized account representative or any alternate CO₂ authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO₂ allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Agency or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision (b)(2)(ii) of this section.

(3) *Changing CO₂ authorized account representative and alternate CO₂ authorized account representative; changes in persons with ownership interest.*

(i) The CO₂ authorized account representative for a general account may be changed at any time upon receipt by the Agency or its agent of a superseding complete application for a general account under subdivision (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO₂ authorized account representative, or the previous alternate CO₂ authorized account representative, prior to the time and date when the Agency or its agent receives the superseding application for a general account shall be binding on the new CO₂ authorized account representative and the persons with an ownership interest with respect to the CO₂ allowances in the general account.

(ii) The alternate CO₂ authorized account representative for a general account may be changed at any time upon receipt by the Agency or its agent of a superseding complete application for a general account under subdivision (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO₂ authorized account representative, or the previous alternate CO₂ authorized account representative prior to the time and date when the Agency or its agent receives the superseding application for a general account shall be binding on the new alternate CO₂ authorized account representative and the persons with an ownership interest with respect to the CO₂ allowances in the general account.

(iii) In the event a new person having an ownership interest with respect to CO₂ allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO₂ authorized account representative and any alternate CO₂ authorized account representative, and the decisions, orders, actions, and inactions of the Agency or its agent, as if the new person were included in such list.

(iv) Within 30 days following any change in the persons having an ownership interest with respect to CO₂ allowances in the general account, including the addition of persons, the CO₂ authorized account representative or any alternate CO₂ authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO₂ allowances in the general account to include the change.

(4) *Objections concerning CO₂ authorized account representative.*

(i) Once a complete application for a general account under subdivision (b)(1) of this section has been submitted and received, the Agency or its agent

will rely on the application unless and until a superseding complete application for a general account under subdivision (b)(1) of this section is received by the Agency or its agent.

(ii) Except as provided in subdivisions (b)(3)(i) and (ii) of this section, no objection or other communication submitted to the Agency or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO₂ authorized account representative or any alternate CO₂ authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CO₂ authorized account representative or any alternate CO₂ authorized account representative or the finality of any decision or order by the Agency or its agent under the CO₂ Budget Trading Program.

(iii) Neither the Agency nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO₂ authorized account representative or any alternate CO₂ authorized account representative for a general account, including private legal disputes concerning the proceeds of CO₂ allowance transfers.

(5) *Delegation by CO₂ authorized account representative and alternate CO₂ authorized account representative.*

(i) A CO₂ authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Agency or its agent provided for under Subchapters VI and VII.

(ii) An alternate CO₂ authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Agency or its agent provided for under Subchapters VI and VII.

(iii) In order to delegate authority to make an electronic submission to the Agency or its agent in accordance with subdivisions (b)(5)(i) and (b)(5)(ii) of this section, the CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, must submit to the Agency or its agent a notice of delegation, in a format prescribed by the Agency that includes the following elements:

(a) The name, address, e-mail address, telephone number, and facsimile transmission number of such CO₂ authorized account representative or alternate CO₂ authorized account representative;

(b) The name, address, e-mail address, telephone number and facsimile transmission number of each such natural person, herein referred to as “electronic submission agent”;

(c) For each such natural person, a list of the type of electronic submissions under subsection (a) or (b) of this section for which authority is delegated to him or her; and

(d) The following certification statements by such CO₂ authorized account representative or alternate CO₂ authorized account representative:

(1) “I agree that any electronic submission to the Agency or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subdivision 22-602(b)(5)(iv) shall be deemed to be an electronic submission by me.”

(2) “Until this notice of delegation is superseded by another notice of delegation under subdivision 22-602(b)(5)(iv), I agree to maintain an e-mail account and to notify the Agency or its agent immediately of any change in my e-mail address unless all delegation authority by me under subdivision 22-602(b)(5) is terminated.”

(iv) A notice of delegation submitted under subdivision (b)(5)(iii) of this section shall be effective, with regard to the CO₂ authorized account representative or alternate CO₂ authorized account representative identified in such notice, upon receipt of such notice by the Agency or its agent and until receipt by the Agency or its agent of a superseding notice of delegation by such CO₂ authorized account representative or alternate CO₂ authorized account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in subdivision (b)(5)(iii)(d)(1) of this section and made in accordance with a notice of delegation effective under subdivision (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CO₂ authorized account representative or alternate CO₂ authorized account representative submitting such notice of delegation.

(c) *Account identification.* The Agency or its agent will assign a unique identifying number to each account established under subsections (a) or (b) of this section.

22-603 CO₂ Allowance Tracking System responsibilities of CO₂ authorized account representative.

Following the establishment of a CO₂ Allowance Tracking System account, all

submissions to the Agency or its agent pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CO₂ allowances in the account, shall be made only by the CO₂ authorized account representative for the account.

22-604 Recordation of CO₂ allowance allocations.

(a) By January 1, 2009, the Agency or its agent will record in the consumer benefit or strategic energy purpose account the CO₂ allowances for all allocation years.

(b) *Serial numbers for allocated CO₂ allowances.* When allocating CO₂ allowances to and recording them in an account, the Agency or its agent will assign each CO₂ allowance a unique identification number that will include digits identifying the year for which the CO₂ allowance is allocated.

22-605 Compliance.

(a) *Allowances available for compliance deduction.* CO₂ allowances that meet the following criteria are available to be deducted in order for a CO₂ budget source to comply with the CO₂ requirements of 22-105(c) for a control period.

(1) The CO₂ allowances, other than CO₂ offset allowances, are of allocation years that fall within a prior control period or the same control period for which the allowances will be deducted.

(2) The CO₂ allowances are held in the CO₂ budget source's compliance account as of the CO₂ allowance transfer deadline for that control period or are transferred into the compliance account by a CO₂ allowance transfer correctly submitted for recordation under section 22-701 by the CO₂ allowance transfer deadline for that control period.

(3) For CO₂ offset allowances, the number of CO₂ offset allowances that are available to be deducted in order for a CO₂ budget source to comply with the CO₂ requirements of 22-105(c) for a control period may not exceed the number of tons representing the following percentages of the CO₂ budget source's CO₂ emissions for that control period, as determined in accordance with Subchapters VI and VIII:

(i) unless the provisions of subdivisions (a)(3)(ii) or (a)(3)(iii) of this section apply, 3.3 percent;

(ii) if the Agency determines that there has been a stage one trigger event, 5 percent;

(iii) if the Agency determines that there has been a stage two trigger event, 10 percent.

(4) The CO₂ allowances are not necessary for deductions for excess emissions for a prior control period under subsection (d) of this section.

(b) *Deductions for compliance.* Following the recordation, in accordance with section 22-702, of CO₂ allowance transfers submitted for recordation in the CO₂ budget source's compliance account by the CO₂ allowance transfer deadline for a control period, the Agency or its agent will deduct CO₂ allowances available under subsection (a) of this section to cover the source's CO₂ emissions (as determined in accordance with Subchapter VIII) for the control period, as follows:

(1) until the amount of CO₂ allowances deducted equals the number of tons of total CO₂ emissions determined in accordance with Subchapter VIII, from all CO₂ budget units at the CO₂ budget source for the control period; or

(2) if there are insufficient CO₂ allowances to complete the deductions in subdivision (b)(1) of this section, until no more CO₂ allowances available under subsection (a) of this section remain in the compliance account.

(c) *Identification of available CO₂ allowances by serial number; default compliance deductions.*

(1) The CO₂ authorized account representative for a source's compliance account may request that specific CO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with subsection (b) or (d) of this section. Such identification shall be made in the compliance certification report submitted in accordance with section 22-401.

(2) The Agency or its agent will deduct CO₂ allowances for a control period from the CO₂ budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO₂ allowances by serial number under subdivision (c)(1) of this section, in the following order:

(i) First, subject to the relevant compliance deduction limitations under subdivisions 22-605(a)(3) and (d)(1), CO₂ offset allowances. CO₂ offset allowances shall be deducted in chronological order (i.e., CO₂ offset allowances from earlier allocation years shall be deducted before CO₂ offset allowances from later allocation years). In the event that some, but not all, CO₂ offset allowances from a particular allocation year are to be deducted, CO₂ offset allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(ii) Second, any CO₂ allowances, other than CO₂ offset allowances, that are available for deduction under subsection 22-605(a). CO₂ allowances

shall be deducted in chronological order (i.e., CO₂ allowances from earlier allocation years shall be deducted before CO₂ allowances from later allocation years). In the event that some, but not all, CO₂ allowances from a particular allocation year are to be deducted, CO₂ allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under subsection (b) of this section, the Agency or its agent will deduct from the CO₂ budget source's compliance account a number of CO₂ allowances, from allocation years that occur after the control period in which the source has excess emissions, equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO₂ allowances to cover three times the number of the source's excess emissions, the source shall be required to immediately transfer CO₂ allowances equal to three times the number of the source's excess emissions into its compliance account. No CO₂ offset allowances may be deducted to account for the source's excess emissions.

(2) Any CO₂ allowance deduction required under subdivision (d)(1) of this section shall not affect the liability of the owners and operators of the CO₂ budget source or the CO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations.

(i) For purposes of determining the number of days of violation, if a CO₂ budget source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(3) The propriety of the Agency's determination that a CO₂ budget source had excess emissions and the concomitant deduction of CO₂ allowances from that CO₂ budget source's account may be later challenged in the context of the initial administrative enforcement, or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that excess emissions violation will not act to prevent the Agency or its agent from initially deducting the CO₂ allowances resulting from the Agency's original determination that the relevant CO₂ budget source has had excess emissions. Should the Agency's determination of the existence or extent of the CO₂ budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the Agency will act as follows.

(i) In any instance where the Agency's determination of the extent of excess emissions was too low, the Agency will take further action under subdivision (d)(1) and (2) of this section to address the expanded violation.

(ii) In any instance where the Agency's determination of the extent of excess emissions was too high, the Agency will distribute to the relevant CO₂ budget source a number of CO₂ allowances equaling the number of CO₂ allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO₂ budget source's compliance account no longer exist, the CO₂ allowances will be provided to a general account selected by the owner or operator of the CO₂ budget source from which they were originally deducted.

(e) The Agency or its agent will record in the appropriate compliance account all

deductions from such an account pursuant to subsections (b) and (d) of this section.

(f) *Action by the Agency on submissions.*

(1) The Agency may review and conduct independent audits concerning any submission under the CO₂ Budget Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Agency may deduct CO₂ allowances from or transfer CO₂ allowances to a source's compliance account based on information in the submissions, as adjusted under subdivision (f)(1) of this section.

22-606 Banking.

Each CO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CO₂ allowance is deducted or transferred under section 22-402, section 22-605, section 22-607, or Subchapter VII.

22-607 Account error.

The Agency or its agent may, at its sole discretion and on his or her own motion, correct any error in any CO₂ Allowance Tracking System account. Within 10 business days of making such correction, the Agency or its agent will notify the CO₂ authorized account representative for the account.

22-608 Closing of general accounts.

(a) A CO₂ authorized account representative of a general account may instruct the Agency or its agent to close the account by submitting a statement requesting deletion

of the account from the CO₂ Allowance Tracking System and by correctly submitting for recordation under section 22-701 a CO₂ allowance transfer of all CO₂ allowances in the account to one or more other CO₂ Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of six years or more and does not contain any CO₂ allowances, the Agency or its agent may notify the CO₂ authorized account representative for the account that the account will be closed in the CO₂ Allowance Tracking System 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Agency or its agent receives a correctly submitted transfer of CO₂ allowances into the account under section 22-701 or a statement submitted by the CO₂ authorized account representative demonstrating to the satisfaction of the Agency or its agent good cause as to why the account should not be closed.

Subchapter VII. CO₂ Allowance Transfers

22-701 Submission of CO₂ allowance transfers.

The CO₂ authorized account representatives seeking recordation of a CO₂ allowance transfer shall submit the transfer to the Agency or its agent. To be considered correctly submitted, the CO₂ allowance transfer shall include the following elements in a format specified by the Agency or its agent:

- (a) the numbers identifying both the transferor and transferee accounts;
- (b) a specification by serial number of each CO₂ allowance to be transferred;
- (c) the printed name and signature of the CO₂ authorized account representative of the transferor account and the date signed;

(d) the date of the completion of the last sale or purchase transaction for the allowance, if any; and

(e) the purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subsection (d) of this section.

22-702 Recordation.

(a) Within 5 business days of receiving a CO₂ allowance transfer, except as provided in subsection (b) of this section, the Agency or its agent will record a CO₂ allowance transfer by moving each CO₂ allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) the transfer is correctly submitted under section 22-701; and

(2) the transferor account includes each CO₂ allowance identified by serial number in the transfer.

(b) A CO₂ allowance transfer into or out of a compliance account that is submitted for recordation following the CO₂ allowance transfer deadline and that includes any CO₂ allowances that are of allocation years that fall within a control period prior to or the same as the control period to which the CO₂ allowance transfer deadline applies will not be recorded until after completion of the process pursuant to subsection 22-605(b).

(c) Where a CO₂ allowance transfer submitted for recordation fails to meet the requirements of subsection (a) of this section, the Agency or its agent will not record such transfer.

22-703 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CO₂ allowance transfer under section 22-702, the Agency or its agent will notify each party to the transfer. Notice will be given to the CO₂ authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CO₂ allowance transfer that fails to meet the requirements of subsection 22-702(a), the Agency or its agent will notify the CO₂ authorized account representatives of both accounts subject to the transfer of:

- (1) a decision not to record the transfer, and
- (2) the reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CO₂ allowance transfer for recordation following notification of non-recordation.

Subchapter VIII. Monitoring and Reporting

22-801 General requirements.

The owners and operators, and to the extent applicable, the CO₂ authorized account representative of a CO₂ budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in this Subchapter and all applicable sections of 40 CFR part 75. Where referenced in this Subchapter, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and

reporting CO₂ mass emissions pursuant to this Subchapter. For purposes of complying with such requirements, the definitions in section 22-102 and in 40 CFR 72.2 shall apply, and the terms “affected unit,” “designated representative,” and “continuous emissions monitoring system” (or “CEMS”) in 40 CFR part 75 shall be replaced by the terms “CO₂ budget unit,” “CO₂ authorized account representative,” and “continuous emissions monitoring system” (or “CEMS”), respectively, as defined in section 22-102. For units not subject to an Acid Rain emissions limitation, the term “Administrator” in 40 CFR Part 75 shall be replaced with “the Agency or its agent.” Owners or operators of a CO₂ budget unit who monitor a non-CO₂ budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16 (b)(2)(ii)(B) as pursuant to 40 CFR 75.13, for purposes of complying with this Chapter, shall monitor and report CO₂ mass emissions from such non-CO₂ budget unit according to the procedures for CO₂ budget units established in this Subchapter.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CO₂ budget unit must meet the following requirements.

(1) Install all monitoring systems required under this Subchapter for monitoring CO₂ mass emissions. This includes all systems required to monitor CO₂ concentration, stack gas flow rate, O₂ concentration, heat input, and fuel flow rate, as applicable, in accordance with 40 CFR 75.13, 75.71 and 75.72 and all portions of appendix G of 40 CFR part 75, except for equation G-1 in 40 CFR Part 75. Equation G-1 in Appendix G shall not be used to determine CO₂ emissions under this Chapter.

(2) Successfully complete all certification tests required under section 22-802 and meet all other requirements of this Subchapter and 40 CFR part 75 applicable to the monitoring systems under subdivision (a)(1) of this section.

(3) Record, report and quality-assure the data from the monitoring systems under subdivision (a)(1) of this section.

(b) *Compliance dates.* The owner or operator shall meet the monitoring system certification and other requirements of subdivisions (a)(1) through (a)(3) of this section on or before the following dates. The owner or operator shall record, report and quality-assure the data from the monitoring systems under subdivision (a)(1) of this section on and after the following dates.

(1) The owner or operator of a CO₂ budget unit, except for a CO₂ budget unit under subdivision (b)(2) of this section, that commences commercial operation before July 1, 2008, must comply with the requirements of this Subchapter by January 1, 2009.

(2) The owner or operator of a CO₂ budget unit that commences commercial operation on or after July 1, 2008 must comply with the requirements of this Subchapter by the later of the following dates:

(i) January 1, 2009; or

(ii) the earlier of:

(a) 90 unit operating days after the date on which the unit commences commercial operation; or

(b) 180 calendar days after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CO₂ budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under subdivision (b)(1) or (b)(2) of this section by the earlier of:

(i) 90 unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue; or

(ii) 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(c) *Reporting data.*

(1) Except as provided in subdivision (c)(2) of this section, the owner or operator of a CO₂ budget unit that does not meet the applicable compliance date set forth in subdivisions (b)(1), (b)(2) and (b)(3) of this section for any monitoring system under subdivision (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or as appropriate minimum potential) values for CO₂ concentration, CO₂ emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO₂ mass emissions in accordance with 40 CFR 75.31(b)(2) or (c)(3) or section 2.4 of appendix D of 40 CFR part 75 as applicable.

(2) The owner or operator of a CO₂ budget unit that does not meet the applicable compliance date set forth in subdivision (b)(3) of this section for any monitoring system under subdivision (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in Subpart D or appendix D of 40 CFR part 75, in lieu of the maximum potential (or as appropriate minimum potential) values for a parameter if the owner or operator

demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision (b)(3) of this section.

(3) *Low Mass Emissions (LME) Methodologies*

(i) CO₂ budget units subject to an Acid Rain emissions limitation that qualify for the optional SO₂, NO_x, and CO₂ emissions calculations for LME units under 40 CFR 75.19 and report emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO₂ emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this Chapter.

(ii) CO₂ budget units subject to an Acid Rain emissions limitation that do not qualify for the optional SO₂, NO_x, and CO₂ emissions calculations for LME units under 40 CFR 75.19, shall not use the CO₂ emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this Chapter.

(iii) CO₂ budget units not subject to an Acid Rain emissions limitation shall qualify for the optional CO₂ emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO_x annually and no more than 25 tons of SO₂ annually.

(d) *Prohibitions.*

(1) No owner or operator of a CO₂ budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emissions monitoring system without having obtained prior written approval in accordance with section 22-806.

(2) No owner or operator of a CO₂ budget unit shall operate the unit so as to discharge, or allow to be discharged, CO₂ emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this Subchapter and 40 CFR part 75.

(3) No owner or operator of a CO₂ budget unit shall disrupt the continuous emissions monitoring system, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO₂ mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this Subchapter and 40 CFR part 75.

(4) No owner or operator of a CO₂ budget unit shall retire or permanently discontinue use of the continuous emissions monitoring system, any component thereof, or any other approved emissions monitoring system under this Subchapter, except under any one of the following circumstances:

(i) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this Subchapter and 40 CFR part 75, by the Agency for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(ii) The CO₂ authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subdivision 22-802(d)(3)(i).

22-802 Initial certification and recertification procedures.

(a) The owner or operator of a CO₂ budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under subdivision 22-801(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with 40 CFR part 75; and

(2) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and appendix B and appendix D of 40 CFR part 75 are fully met for the certified monitoring system described in subdivision (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under subdivision 22-801(a)(1) exempt from initial certification requirements under subsection (a) of this section.

(c) If the Administrator has previously approved a petition under 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16 (b)(2)(ii)(B) as pursuant to 40 CFR 75.13 for apportioning the CO₂ emissions rate measured in a common stack or a petition under 40 CFR 75.66 of this chapter for an alternative requirement in 40 CFR part 75, the CO₂ authorized account representative shall submit the petition to the Agency under subsection 22-806(a) to determine whether the approval applies under this program.

(d) Except as provided in subsection (a) of this section, the owner or operator of a CO₂ budget unit shall comply with the following initial certification and recertification procedures for a continuous emissions monitoring system and an excepted monitoring system under appendix D of 40 CFR part 75 and under subdivision 22-801(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR part 75 shall comply with the procedures in subsection (e) or (f) of this section, respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous emissions monitoring system required under subdivision 22-801(a)(1) (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadlines specified in subsection 22-801(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this Subchapter in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

(2) *Requirements for recertification.* For systems using the stack measurements such as stack flow, stack moisture content, CO₂ or O₂ monitors, whenever the owner or operator makes a replacement, modification, or change in a certified continuous emissions monitoring system under subdivision 22-801(a)(1) that the Administrator or the Agency determines significantly affects the ability of the system to accurately measure or record CO₂ mass emissions or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or appendix B to 40 CFR part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the Agency determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

(3) *Approval process for initial certifications and recertification.* Subdivisions (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a monitoring system under subdivision 22-801(a)(1). For recertifications,

replace the words “certification” and “initial certification” with the word “recertification,” replace the word “certified” with “recertified,” and proceed in the manner described in 40 CFR 75.20(b)(5) and (g)(7) in lieu of subdivision (d)(3)(v) of this section.

(i) *Notification of certification.* The CO₂ authorized account representative shall submit to the Agency or its agent, the appropriate EPA Regional Office and the Administrator a written notice of the dates of certification in accordance with section 22-804.

(ii) *Certification application.* The CO₂ authorized account representative shall submit to the Agency or its agent a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

(iii) *Provisional certification data.* The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO₂ budget Trading Program for a period not to exceed 120 days after receipt by the Agency of the complete certification application for the monitoring system or component thereof under subdivision (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Agency does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Agency.

(iv) *Certification application approval process.* The Agency will issue a written notice of approval or disapproval of the certification application to the owner

or operator within 120 days of receipt of the complete certification application under subdivision (d)(3)(ii) of this section. In the event the Agency does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR part 75 and is included in the certification application will be deemed certified for use under the CO₂ Budget Trading Program.

(a) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR part 75, then the Agency will issue a written notice of approval of the certification application within 120 days of receipt.

(b) *Incomplete application notice.* If the certification application is not complete, then the Agency will issue a written notice of incompleteness that sets a reasonable date by which the CO₂ authorized account representative submit the additional information required to complete the certification application. If the CO₂ authorized account representative does not comply with the notice of incompleteness by the specified date, then the Agency may issue a notice of disapproval under subdivision (d)(3)(iv)(c) of this section. The 120 day review period shall not begin before receipt of a complete certification application

(c) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of 40 CFR part 75, or if the certification application is incomplete and the requirement for disapproval under subdivision (d)(3)(iv)(b) of this section is met, then the Agency will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Agency and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality assured data beginning with the

date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision (d)(3)(v) of this section for each monitoring system or component thereof, which is disapproved for initial certification.

(d) *Audit decertification.* The Agency may issue a notice of disapproval of the certification status of a monitor in accordance with subsection 22-803(b).

(v) *Procedures for loss of certification.* If the Agency issues a notice of disapproval of a certification application under subdivision (d)(3)(iv)(c) of this section or a notice of disapproval of certification status under subdivision (d)(3)(iv)(d) of this section, then:

(a) The owner or operator shall substitute the following values for each disapproved monitoring system, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7):

(1) for units using or intending to monitor for CO₂ mass emissions using heat input or for units using the low mass emissions excepted methodology under 40 CFR 75.19, the maximum potential hourly heat input of the unit; or

(2) for units intending to monitor for CO₂ mass emissions using a CO₂ pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO₂ and the maximum potential flow rate of the unit under section 2.1 of appendix A of 40 CFR part 75.

(b) The CO₂ authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions (d)(3)(i) and (ii) of this section; and

(c) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Agency's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for low mass emissions units using the excepted methodologies under subdivision 22-801(c)(3).* The owner or operator of a unit qualified to use the low mass emissions excepted methodology under subdivision 22-801(c)(3) shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h) and section 22-802. If the owner or operator of such a unit elects to certify a fuel flow meter system for heat input determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

(f) *Certification/recertification procedures for alternative monitoring systems.* The CO₂ authorized account of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the Agency under Subpart E of 40 CFR part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

22-803 Out-of-control periods.

(a) Whenever any monitoring system fails to meet the quality assurance and quality control requirements or data validation requirements of 40 CFR part 75, data shall

be substituted using the applicable procedures in Subpart D or appendix D of 40 CFR part 75.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under section 22-802 or the applicable provisions of 40 CFR part 75 , both at the time of the initial certification or recertification application submission and at the time of the audit, the Agency or Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the Agency or the Administrator. By issuing the notice of disapproval, the Agency or Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the initial certification or recertification procedures in section 22-802 for each disapproved monitoring system.

22-804 Notifications.

The CO₂ authorized account representative for a CO₂ budget unit shall submit written notice to the Agency and the Administrator in accordance with 40 CFR 75.61.

22-805 Recordkeeping and reporting.

(a) *General provisions.* The CO₂ authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable record keeping and reporting requirements under 40 CFR 75.73 and with the requirements of subsection 22-201(e).

(b) *Monitoring plans.* The owner or operator of a CO₂ budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.

(c) *Certification applications.* The CO₂ authorized account representative shall submit an application to the Agency within 45 days after completing all CO₂ monitoring system initial certification or recertification tests required under section 22-802 including the information required under CFR 75.63 and 40 CFR 75.53 (e) and (f) .

(d) *Quarterly reports.* The CO₂ authorized account representative shall submit quarterly reports, as follows:

(1) The CO₂ authorized account representative shall report the CO₂ mass emissions data for the CO₂ budget unit, in an electronic format prescribed by the Administrator unless otherwise prescribed by the Agency for each calendar quarter beginning with:

(i) for a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(ii) for a unit commencing commercial operation on or after July 1, 2008, the calendar quarter corresponding to, the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection 22-801(b) or,

unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The CO₂ authorized account representative shall submit each quarterly report to the Agency or its agent within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR part 75 and 40 CFR 75.64. Quarterly reports shall be submitted for each CO₂ budget unit (or group of units using a common stack), and shall include all of the data and information required in Subpart G of 40 CFR part 75, except for opacity, NO_x and SO₂ provisions.

(3) *Compliance certification.* The CO₂ authorized account representative shall submit to the Agency or its agent a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(i) the monitoring data submitted were recorded in accordance with the applicable requirements of this Subchapter and 40 CFR part 75, including the quality assurance procedures and specifications;

(ii) for a unit with add-on CO₂ emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of 40 CFR part 75 and the substitute values do not systematically underestimate CO₂ emissions; and

(iii) the CO₂ concentration values substituted for missing data under Subpart D of 40 CFR part 75 do not systematically underestimate CO₂ emissions.

22-806 Petitions.

(a) Except as provided in subsection (c) of this section, the CO₂ authorized account representative of a CO₂ budget unit that is subject to an Acid Rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Agency requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this Subchapter only to the extent that the petition is approved in writing by the Administrator, and subsequently approved in writing by the Agency.

(b) *Petitions for a CO₂ budget unit that is subject to an Acid Rain emissions limitation.*

(1) The CO₂ authorized account representative of a CO₂ budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Agency requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this Subchapter only to the extent that the petition is approved in writing by the Administrator, and subsequently approved in writing by the Agency.

(2) In the event that the Administrator declines to review a petition under subdivision 22-806(b)(1), the CO₂ authorized account representative of a CO₂ budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the Agency requesting approval to apply an alternative to any requirement of this Subchapter. The petition shall contain all of the relevant information specified in 40 CFR 75.66. Application

of an alternative to any requirement of this Subchapter is in accordance with this Subchapter only to the extent the petition is approved in writing by the Agency.

(c) The CO₂ authorized account representative of a CO₂ budget unit that is subject to an Acid Rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Agency requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a CO₂ concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this Subchapter only to the extent the petition is approved in writing by the Administrator, and subsequently approved in writing by the Agency.

22-807 Reserved.

22-808 Additional requirements to provide output data.

(a) A CO₂ budget unit in a state that requires the use of information submitted to the Independent System Operator (ISO) to document megawatt-hours (MWh) the CO₂ budget unit produces, shall submit to the Agency or its agent the same MWh value submitted to the ISO and a statement certifying that the MWh of electrical output reported reflects the total actual electrical output for all CO₂ budget units at the facility used by the ISO to determine settlement resources of energy market participants.

(b) A CO₂ budget unit in a state that requires gross output to be used that also reports gross hourly MW to the Administrator, shall use the same electronic data report (EDR) gross output (in MW), as submitted to the Administrator, for the hour times operating time in the hour, added for all hours in a year. A CO₂ budget unit that does not report gross hourly MW to the Administrator shall submit to the Agency or its agent information in

accordance with subdivision 22-808(e)(1).

(c) A CO₂ budget unit in a state that requires net electrical output, shall submit to the Agency or its agent information in accordance with subdivision 22-808(e)(1). A CO₂ budget source whose electrical output is not used in ISO energy market settlement determinations shall propose to the Agency a method for quantification of net electrical output.

(d) CO₂ budget sources selling steam should use billing meters to determine net steam output. A CO₂ budget source whose steam output is not measured by billing meters or whose steam output is combined with output from a non-CO₂ budget unit prior to measurement by the billing meter shall propose to the Agency an alternative method for quantification of net steam output. If data for steam output is not available, the CO₂ budget source may report heat input providing useful steam output as a surrogate for steam output.

(e) *Monitoring.* The owner or operator of each CO₂ budget unit, in a state that requires reporting of the CO₂ budget unit's net output, shall meet the following requirements. Each CO₂ budget source shall submit an output monitoring plan. The output monitoring plan must include a description and diagram as stated below.

(1) Submit a diagram of the electrical and/or steam system for which output is being monitored, specifically including the following.

(i) If the CO₂ budget unit monitors net electric output, the diagram should contain all CO₂ budget units and all generators served by each CO₂ budget unit and the relationship between CO₂ budget units and generators. If a generator served by a CO₂ budget unit is also served by a non-affected unit, the non-affected unit and its relationship

to each generator should be indicated on the diagram as well. The diagram should indicate where the net electric output is measured and should include all electrical inputs and outputs to and from the plant. If net electric output is determined using a billing meter, the diagram should show each billing meter used to determine net sales of electricity and should show that all electricity measured at the point of sale is generated by the CO₂ budget units.

(ii) If the CO₂ budget unit monitors net thermal output, the diagram should include all steam or hot water coming into the net steam system, including steam from CO₂ budget units and non-affected units, and all exit points of steam or hot water from the net steam system. In addition, each input and output stream will have an estimated temperature, pressure and phase indicator, and an enthalpy in Btu/lb. The diagram of the net steam system should identify all useful loads, house loads, parasitic loads, any other steam loads and all boiler feedwater returns. The diagram will represent all energy losses in the system as either usable or unusable losses. The diagram will also indicate all flow meters, temperature or pressure sensors or other equipment used to calculate gross thermal output. If a sales agreement is used to determine net thermal output, the diagram should show the monitoring equipment used to determine the sales of steam.

(2) Submit a description of each output monitoring system. The description of the output monitoring system should include a written description of the output system and the equations used to calculate output. For net thermal output systems descriptions and justifications of each useful load should be included.

(3) Submit a detailed description of all quality assurance/quality control activities that will be performed to maintain the output system in accordance with subsection 22-808(g).

(4) Submit documentation supporting any output value(s) to be used as a missing data value should there be periods of invalid output data. The missing data output value must be either zero or an output value that is likely to be lower than a measured value and that is approved as part of the monitoring plan required under this subsection.

(f) *Initial certification.* A certification statement must be submitted by the CO₂ authorized account representative stating that either the output monitoring system consists entirely of billing meters or that the output monitoring system meets one of the accuracy requirements for non-billing meters at subdivision (f)(2) of this section. This statement may be submitted with the certification application required under subsection 22-805(c).

(1) *Billing meters.* The billing meter must record the electric or thermal output. Any electric or thermal output values that the facility reports must be the same as the values used in billing for the output. Any output measurement equipment used as a billing meter in commercial transactions requires no additional certification or testing.

(2) *Non-billing meters.* For non-billing meters, the output monitoring system must either meet an accuracy of within 10% of the reference value, or each component monitor for the output system must meet an accuracy of within 3% of the full scale value, whichever is less stringent.

(i) *System approach to accuracy.* The system approach to accuracy must include a determination of how the system accuracy of 10% is achieved using the individual components in the system and should include data loggers and any wattmeters used to calculate the final net electric output data and/or any flowmeters for steam or condensate, temperature measurement devices, absolute pressure measurement devices, and differential pressure devices used for measuring thermal energy.

(ii) *Component approach to accuracy.* If testing a piece of output measurement equipment shows that the output readings are not accurate to within 3.0 percent of the full scale value, then the equipment should be repaired or replaced to meet that requirement. Data shall remain invalid until the output measurement equipment passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test.

(g) *Ongoing QA/QC.* Ongoing quality assurance/quality control activities must be performed in order to maintain the output system.

(1) *Billing meters.* In the case where billing meters are used to determine output, no QA/QC activities beyond what are already performed are required.

(2) *Non-billing meters.* Certain types of equipment such as potential transformers, current transformers, nozzle and venture type meters, and the primary element of an orifice plate only require an initial certification of calibration and do not require periodic recalibration unless the equipment is physically changed. However, the pressure and temperature transmitters accompanying an orifice plate will require periodic retesting. For other types of equipment, either recalibrate or re-verify the meter accuracy at least once every two years (i.e., every eight calendar quarters), unless a consensus standard allows for less frequent calibrations or accuracy tests. For non-billing meters, the output monitoring system must either meet an accuracy of within 10% of the reference value, or each component monitor for the output system must meet an accuracy of within 3% of the full scale value, whichever is less stringent. If testing a piece of output measurement equipment shows that the output readings are not accurate to within 3.0 percent of the full scale value, then the equipment should be repaired or replaced to meet that requirement.

(3) *Out-of-control periods.* If testing a piece of output measurement equipment shows that the output readings are not accurate to the certification value, data remain invalid until the output measurement equipment passes an accuracy test or is replaced with another piece of equipment that passes the accuracy test. All invalid data shall be replaced by either zero or an output value that is likely to be lower than a measured value and that is approved as part of the monitoring plan required under subsection 22-808(e).

(h) *Recordkeeping and reporting.*

(1) *General provisions.* The CO₂ authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of subsections 22-105(e) and 22-201(e).

(2) *Recordkeeping.* Facilities shall retain data used to monitor, determine, or calculate net generation for ten years.

(3) *Annual reports.* The CO₂ authorized account representative shall submit annual output reports, as follows. The data must be sent both electronically and in hardcopy by March 1 for the immediately preceding calendar year to the Agency or its agent. The annual report shall include unit level MWh, all useful steam output and a certification statement from the CO₂ authorized account representative stating the following, "I am authorized to make this submission on behalf of the owners and operators of the CO₂ budget sources or CO₂ budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and

complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

Subchapter IX. RESERVED

Subchapter X. CO₂ Emissions Offset Projects

22-1001 Purpose.

The Agency will provide for the award of CO₂ offset allowances to sponsors of CO₂ emissions offset projects or CO₂ emissions credit retirements that have reduced or avoided atmospheric loading of CO₂, CO₂ equivalent or sequestered carbon as demonstrated in accordance with the applicable provisions of this Subchapter. The requirements of this Subchapter seek to ensure that CO₂ offset allowances awarded represent CO₂ equivalent emission reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent within the framework of a standards-based approach. Subject to the relevant compliance deduction limitations of subdivision 22-605(a)(3), CO₂ offset allowances may be used by any CO₂ budget source for compliance purposes.

22-1002 Definitions.

The terms defined in this section shall apply to this Subchapter only, and for the purposes of this Chapter shall supersede definitions contained in any other statutes or regulations. The definitions contained in section 22-102 shall govern in the absence of a superseding definition in this section.

(a) *Anaerobic digester*. A device that promotes the decomposition of organic material to simple organics and gaseous biogas products, usually accomplished by means of controlling temperature and volume, and including a methane recovery system.

(b) *ANSI*. American National Standards Institute.

(c) *ASHRAE*. American Society of Heating, Refrigerating and Air-Conditioner Engineers.

(d) *Biogas*. Gas resulting from the decomposition of organic matter under anaerobic conditions. The principle constituents are methane and carbon dioxide.

(e) *CO₂e*. CO₂e means carbon dioxide equivalent.

(f) *Commercial building*. A building to which the provisions of ANSI/ASHRAE/IESNA Standard 90.1 apply, which includes buildings except low-rise residential buildings. Low-rise residential buildings include single family homes, multifamily structures of three stories or fewer above grade, and manufactured homes (modular and mobile).

(g) *Conflict of interest*. A situation that may arise with respect to an individual in relation to any specific project sponsor, CO₂ emissions offset project or category of offset projects, such that the individual's other activities or relationships with other persons or organizations render or may render the individual incapable of providing an impartial certification opinion, or otherwise compromise the individual's objectivity in performing certification functions.

(h) *Cooperating regulatory agency.* A regulatory agency in a state or United States jurisdiction that is not a participating state that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states to carry out certain obligations relative to CO₂ emissions offset projects in that state or United States jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of this Subchapter.

(i) *Energy services.* Provision of useful services to building occupants, such as heating and hot water, cooling, and lighting.

(j) *Forested condition.* Land shall be deemed to be in a forested condition if it is:

(1) at least 1.0 acre in size and 120.0 feet wide measured stem-to-stem from the outer-most edge. Forested strips must be 120.0 feet wide for a continuous length of at least 363.0 feet in order to meet the acre threshold; and

(2) meets at least one of the two following stocking criteria:

(i) the land is at least 10-percent stocked by trees of any size or has been at least 10-percent stocked in the past, and the condition is not subject to non-forest use(s) that prevent normal tree regeneration and succession such as regular mowing, intensive grazing, or recreation activities; or

(ii) in several western woodland species where stocking cannot be determined, the land has at least 5-percent crown cover by trees of any size, or has had at least 5-percent cover in the past, and the condition is not subject to non-forest use that prevents normal regeneration and succession such as regular mowing, chaining, or

recreation activities.

(k) *IESNA*. Illuminating Engineering Society of North America.

(l) *Independent verifier*. An individual that has been approved by the Agency or its agent to conduct verification activities.

(m) *Non-forested condition*. Land that does not meet the definition of "forested condition." Non-forested land includes areas used for crops, improved pasture, residential areas, city parks, improved roads of any width and adjoining rights-of-way, power line clearings of any width, and non-census water. If intermingled in forest areas, unimproved roads and non-forest strips must be more than 120.0 feet wide, and clearings more than one acre in size, to qualify as non-forest land.

(n) *Non-census water*. Streams, sloughs, estuaries, and canals more than 120 feet and less than 1/8 of a mile wide. Lakes, reservoirs, and ponds 1 to 40 acres in size.

(o) *Offset project*. An offset project includes all equipment, materials, items, or actions directly related to the reduction of CO₂ equivalent emissions or the sequestration of carbon specified in a consistency application submitted pursuant to section 22-1005. Equipment, materials, items, or actions unrelated to an offset project reduction of CO₂ equivalent emissions or the sequestration of carbon, but occurring at a location where an offset project occurs, shall not be considered part of an offset project, unless specified by this Subchapter.

(p) *On-site combustion*. The combustion of fossil fuel at a building to provide building services, such as heating, hot water, or electricity.

(q) *Permanently retired.* A greenhouse gas allowance or credit has been “permanently retired” if it has been placed in a retirement account controlled by the jurisdiction that generated the allowance or credit, or has been placed in an allowance retirement account controlled by the Agency, or is otherwise determined by the Agency to have been rendered unusable.

(r) *Project commencement.* For an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials, the date of the beginning of such activity. For an offset project that involves the implementation of a management activity or protocol, the date on which such activity is first implemented or such protocol first utilized.

(s) *Renewable portfolio standard.* A statutory or regulatory requirement that a load-serving entity provide a certain portion of the electricity it supplies to its customers from renewable energy sources, or any other statutory or regulatory requirement that a certain portion of electricity supplied to the electricity grid be generated from renewable energy sources.

(t) *Residential building.* A low-rise residential building to which the provisions of ANSI/ASHRAE/IESNA Standard 90.1 do not apply. Includes single family homes, multifamily structures of three stories or fewer above grade, and manufactured homes (modular and mobile).

(u) *System benefit fund.* Any fund collected directly from retail electricity or natural gas ratepayers.

(v) *Transmission and/or distribution entity.* The assets and equipment used to transmit and distribute electricity from an electric generator to the electrical load of a

customer. Includes all related assets and equipment located within the service territory of the entity, defined as the service territory of a load-serving entity specified by the applicable state regulatory agency.

(w) *Verification.* The determination by an independent verifier that certain parts of a CO₂ emissions offset project consistency application and/or measurement, monitoring or verification report conforms to the requirements of this Subchapter.

(x) *Zero net energy building.* A building designed to produce as much energy, using renewable energy sources, as the building is projected to use, as measured on an annual basis.

22-1003 Eligible CO₂ offset projects.

(a) *Offset project types.* The following types of offset projects are eligible for the award of CO₂ offset allowances by the Agency.

(1) *Landfill methane capture and destruction.* Offset projects that capture and destroy methane from landfills that have satisfied all of the applicable requirements of this Subchapter and the Agency's Procedure for CO₂ Offset Emissions Projects.

(2) *Reduction in emissions of sulfur hexafluoride (SF₆).* Offset projects that prevent emissions of sulfur hexafluoride to the atmosphere from equipment in an electricity transmission and/or distribution entity, through capture and storage, recycling, or destruction, provided they have satisfied all of the applicable requirements of this Subchapter and the Agency's Procedure for CO₂ Offset Emissions Projects.

(3) *Sequestration of carbon due to afforestation.* Offset projects that sequester carbon through the conversion of land from a non-forested to forested condition that have satisfied all of the applicable requirements of this Subchapter and the Agency's Procedure for CO₂ Offset Emissions Projects.

(4) *Reduction or avoidance of CO₂ emissions from natural gas, oil, or propane end-use combustion due to end-use energy efficiency.* Offset projects that reduce CO₂ emissions by reducing on-site combustion of natural gas, oil, or propane for end-use in an existing or new commercial or residential building by improving the energy efficiency of fuel usage and/or the energy-efficient delivery of energy services that have satisfied all of the applicable requirements of this Subchapter and the Agency's Procedure for CO₂ Offset Emissions Projects. Eligible new buildings are limited to new buildings that are designed to replace an existing building on the offset project site, or new buildings designed to be zero net energy buildings.

(5) *Avoided methane emissions from agricultural manure management operations.* Offset projects that capture and destroy methane from animal manure and organic food waste using anaerobic digesters that have satisfied all of the applicable requirements of this Subchapter and the Agency's Procedure for CO₂ Offset Emissions Projects.

22-1004 General Requirements

(a) *Offset project locations.* The Agency may award CO₂ offset allowances to eligible offset project types that are located in any of the following locations:

- (1) in Vermont;

(2) partly in Vermont and partly in one or more other participating states, provided that the larger part of the CO₂ equivalent emissions reduction or carbon sequestration due to the offset project occur in Vermont; and

(3) in any state or other United States jurisdiction in which a cooperating regulatory agency has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states to carry out certain obligations relative to CO₂ emissions offset projects in that state or U.S. jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of this Subchapter.

(b) *Eligible CO₂ emissions credit retirements.* To qualify for the award of CO₂ offset allowances, the CO₂ emissions credit retirement shall satisfy all the applicable requirements of this Subchapter.

(1) CO₂ emissions credit retirements include the permanent retirement of greenhouse gas allowances or credits issued pursuant to any governmental mandatory carbon constraining program outside the United States that places a specific tonnage limit on greenhouse gas emissions, provided the allowances or credits are acceptable and valid for use in that program at the time of filing of the consistency application under section 22-1005, or certified greenhouse gas emissions reduction credits issued pursuant to the United Nations Framework Convention on Climate Change (UNFCCC) or protocols adopted through the UNFCCC process.

(2) The Agency may award CO₂ offset allowances for CO₂ emissions credit retirements only after the occurrence of a stage two trigger event.

(c) *Project sponsor.* Any person may act as the sponsor of an eligible CO₂ emissions offset project or CO₂ emissions credit retirement, provided that person meets the requirements of section 22-1005.

(d) *Emissions baseline determinations.* Eligible offset projects shall determine the emissions baseline or carbon sequestration baseline in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(e) *Emissions reduction calculations.* Eligible offset projects shall calculate emissions reductions or carbon sequestration in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(f) *Monitoring and verification requirements.* Eligible offset projects are subject to the following monitoring and verification requirements.

(1) Offset projects shall employ collection systems and/or utilize other means, as appropriate, to quantify, monitor, and verify the reduction or avoidance of atmospheric loading of CO₂ or CO₂ equivalent or the sequestration of carbon in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(2) The project sponsor shall submit a monitoring and verification plan, as part of the consistency application, in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects. The monitoring and verification plan shall be certified by an independent verifier accredited pursuant to section 22-1006.

(3) The project sponsor shall submit monitoring and verification reports in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(g) *General additionality requirements.* Except as provided with respect to specific offset project criteria in section 22-1003 and the Agency's Procedure for CO₂ Offset Emissions Projects, the following general requirements shall apply.

(1) CO₂ offset allowances shall not be awarded to an offset project or CO₂ emissions credit retirement that is required pursuant to any local, state or federal law, regulation, or administrative or judicial order. If an offset project receives a consistency determination under section 22-1005 and is later required by local, state or federal law, regulation, or administrative or judicial order, then the offset project shall remain eligible for the award of CO₂ offset allowances until the end of its current allocation period but its eligibility shall not be extended for an additional allocation period.

(2) CO₂ offset allowances shall not be awarded to an offset project that includes an electric generation component, unless the project sponsor transfers legal rights to any and all attribute credits (other than the CO₂ offset allowances awarded under section 22-1007) generated from the operation of the offset project that may be used for compliance with a renewable portfolio standard or other regulatory requirement, to the Agency or its agent.

(3) CO₂ offset allowances shall not be awarded to an offset project that receives funding or other incentives from any system benefit fund, or funds or other incentives provided through the consumer benefit or strategic energy purpose account.

(4) CO₂ offset allowances shall not be awarded to an offset project or CO₂ emissions credit retirement that is awarded credits or allowances under any other mandatory or voluntary greenhouse gas program.

(h) *Maximum allocation periods for CO₂ emissions offset projects.*

(1) *Maximum allocation periods.* Except as provided in subdivision (h)(2) of this section, the Agency may award CO₂ offset allowances under section 22-1007 for an initial 10-year allocation period. At the end of the initial 10-year allocation period, the Agency may award CO₂ offset allowances for a second 10-year allocation period, provided the offset sponsor has submitted a consistency application pursuant to section 22-1005 prior to the expiration of the initial allocation period, and the Agency has issued a consistency determination pursuant to subdivision 22-1005(e)(2).

(2) *Maximum afforestation allocation period.* The Agency may award CO₂ offset allowances under section 22-1007 for any afforestation offset project for an initial 20-year allocation period. At the end of the initial 20-year allocation period, the Agency may award CO₂ offset allowances for a second 20-year allocation period, provided the offset sponsor has submitted a consistency application for the afforestation offset project pursuant to section 22-1005 prior to the expiration of the initial allocation period, and the Agency has issued a consistency determination pursuant to subdivision 22-1005(e)(2). At the end of the second 20-year allocation period, the Agency may award CO₂ offset allowances for a third 20-year allocation period, provided the offset sponsor has submitted a consistency application for the afforestation offset project pursuant to section 22-1005 prior to the expiration of the second allocation period, and the Agency has issued a consistency determination pursuant to subdivision 22-1005(e)(2). In no event may an afforestation offset project be awarded CO₂ offset allowances for more than a total of 60 allocation years.

(i) *Timing of offset projects.* The Agency may award CO₂ offset allowances under section 22-1007 only for offset projects that are initially commenced on or after December 20, 2005.

(j) *Offset project audit.* Project sponsors shall provide the Agency or its agent access to the physical location of the offset project to inspect for compliance with this Subchapter. For offset projects located in any state or other U.S. jurisdiction that is not a participating state, project sponsors shall also provide the cooperating regulatory agency with access to the physical location of the offset project to inspect for compliance with this Subchapter.

(k) *Ineligibility due to noncompliance.* If at any time the Agency determines that a project sponsor has not complied with the requirements of this Subchapter, then the Agency may revoke and retire any and all CO₂ offset allowances in the project sponsor's account. If at any time the Agency determines that an offset project does not comply with the requirements of this Subchapter, then the Agency may revoke any approvals it has issued relative to an offset project.

22-1005 Application process

(a) *Establishment of general account.* The sponsor of an offset project or CO₂ emissions credit retirement must establish a general account under subsection 22-602(b). All submissions to the Agency required for the award of CO₂ offset allowances under this Subchapter must be from the CO₂ authorized account representative for the general account of the sponsor of the relevant offset project or CO₂ emissions credit retirement, herein referred to as "project sponsor."

(b) *Consistency application deadlines.*

(1) For offset projects commenced prior to January 1, 2009, the project sponsor must submit the consistency application by June 30, 2009.

(2) For offset projects commenced on or after January 1, 2009, the consistency application must be submitted by the date that is 6 months after the offset project is commenced.

(3) Any consistency application that fails to meet the deadlines of this subsection will result in the denial of the consistency application and the continued ineligibility of the subject offset project.

(c) *Consistency application contents.*

(1) For an offset project, the consistency application must include the following information.

(i) The project's sponsor's name, address, e-mail address, telephone number, facsimile transmission number, and account number.

(ii) A detailed description of the offset project provided in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(iii) A demonstration that the offset project meets all applicable requirements set forth in this Subchapter in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(iv) A determination of the emissions baseline or carbon sequestration baseline made in accordance with the Agency's Procedure for CO₂ Offset

Emissions Projects.

(v) An explanation of how the projected reduction or avoidance of atmospheric loading of CO₂ or CO₂ equivalent or the sequestration of carbon is to be quantified, monitored, and verified in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(vi) A completed consistency application agreement that reads as follows: "The undersigned project sponsor recognizes and accepts that the application for, and the receipt of, CO₂ offset allowances under the CO₂ Budget Trading Program is predicated on the project sponsor following all the requirements of Subchapter X of Vermont's CO₂ Budget Trading Program Regulations. The undersigned project sponsor holds the legal rights to the offset project, or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO₂ offset allowances under Subchapter X is contingent on meeting the requirements of Subchapter X in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects. I authorize the Agency or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in this application. I understand that this right to audit shall include the right to enter the physical location of the offset project. I submit to the legal jurisdiction of the State of Vermont."

(vii) A statement and certification report signed by the offset project sponsor certifying that all offset projects for which the sponsor has received CO₂ offset allowances under this Subchapter (or similar provisions in the rules of other participating states), under the sponsor's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the sponsor) are in

compliance with all applicable requirements of the CO₂ Budget Trading Program in all participating states.

(viii) A verification report and certification statement signed by an independent verifier accredited pursuant to section 22-1006 that expresses that the independent verifier has reviewed the entire application and evaluated the following in relation to the applicable requirements of this Subchapter and the Agency's Procedure for CO₂ Offset Emissions Projects.

(a) The adequacy and validity of the offset project description information supplied by the project sponsor to demonstrate that the offset project meets the applicable requirements of this Subchapter in the Agency's Procedure for CO₂ Offset Emissions Projects.

(b) The adequacy and validity of information supplied by the project sponsor to demonstrate baseline emissions pursuant to the applicable requirements of this Subchapter and in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(c) The adequacy of the monitoring and verification plan submitted pursuant to the applicable requirements of this Subchapter and in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(d) Such other evaluations and statements as may be required by the Agency.

(ix) Disclosure of any voluntary or mandatory programs, other than the CO₂ Budget Trading Program, to which greenhouse gas emissions data related to the

offset project has been, or will be reported.

(x) For offset projects located in a state or United States jurisdiction that is not a participating state, a demonstration that the project sponsor has complied with all requirements of the cooperating regulatory agency in the state or United States jurisdiction where the offset project is located.

(2) For a CO₂ emissions credit retirement, the consistency application must include sufficient information to demonstrate that the CO₂ emissions credit is eligible pursuant to subsection 22-1004(b), was lawfully held by the project sponsor, and has been permanently and irrevocably retired.

(3) Consistency applications shall be submitted in a format approved by the Agency.

(d) *Prohibition against filing consistency applications in more than one state.*

(1) Consistency applications may not be submitted to the Agency if a consistency application has already been submitted for the same project, or any portion of the same project, in another participating state, unless the consistency application was rejected by another participating state solely because more of the CO₂ equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in Vermont than in any other participating state.

(2) Consistency applications may not be submitted to the Agency if a consistency application has already been submitted for the same CO₂ emissions credit retirement in another participating state.

(e) *Agency action on consistency applications.*

(1) *Completeness determination.* Within 60 days following receipt of the consistency application filed pursuant to this section, the Agency will notify the project sponsor whether the consistency application is complete. A complete consistency application is one that is in an approved form and is determined by the Agency to be complete for the purpose of commencing review of the consistency application. In no event shall a completeness determination prevent the Agency from requesting additional information in order to enable the Agency to make a consistency determination under subdivision (e)(2) of this section.

(2) *Consistency determination.* Within 120 days of making the completeness determination under subdivision (e)(1) of this section, the Agency will issue a determination as to whether the offset project is consistent with the requirements of sections 22-1003, 22-1004, and 22-1005. For any offset project found to lack consistency with these requirements, the Agency will inform the project sponsor of the offset project's deficiencies.

22-1006 Accreditation of independent verifiers

(a) *Standards for accreditation.* Independent verifiers may be accredited by the Agency to provide verification services as required of project sponsors under this Subchapter, provided that independent verifiers meet all of the requirements of this section.

(1) *Verifier minimum requirements.* Each accredited independent verifier shall demonstrate knowledge of the following topics:

- (i) utilizing engineering principles;
- (ii) quantifying greenhouse gas emissions;
- (iii) developing and evaluating air emissions inventories;
- (iv) auditing and accounting principles;
- (v) knowledge of information management systems;
- (vi) knowledge of the requirements of this Subchapter and other applicable requirements of this Chapter; and
- (vii) such other qualifications as may be required by the Agency to provide competent verification services as required for individual offset categories specified at section 22-1003.

(2) *Organizational qualifications.* Accredited independent verifiers shall demonstrate that they meet the following requirements:

- (i) verifiers shall have no direct or indirect financial relationship, beyond a contract for provision of verification services, with any offset project developer or project sponsor;
- (ii) verifiers shall employ staff with professional licenses, knowledge, and experience appropriate to the specific category(ies) of offset projects at section 22-1003 that they seek to verify;

(iii) verifiers shall hold a minimum of one million U.S. dollars of professional liability insurance. If the insurance is in the name of a related entity, the verifier shall disclose the financial relationship between the verifier and the related entity, and provide documentation supporting the description of the relationship; and

(iv) verifiers shall demonstrate that they have implemented an adequate management protocol to identify potential conflicts of interest with regard to an offset project, offset project developer, or project sponsor, or any other party with a direct or indirect financial interest in an offset project that is seeking or has been granted approval of a consistency application pursuant to subsection 22-1005(e), and remedy any such conflicts of interest prior to providing verification services.

(3) *Pre-qualification of verifiers.* The Agency may require prospective verifiers to successfully complete a training course, workshop, or test developed by the Agency or its agent, prior to submitting an application for accreditation.

(b) *Application for accreditation.* An application for accreditation shall not contain any proprietary information, and shall include the following:

(1) the applicant's name, address, e-mail address, telephone number, and facsimile transmission number;

(2) documentation that the applicant has at least two years of experience in each of the knowledge areas specified at subdivisions (a)(1)(i) through (v) of this section, and as may be required pursuant to subdivision (a)(1)(vii) of this section;

(3) documentation that the applicant has successfully completed the

requirements at subdivision (a)(3) of this section, as applicable;

(4) a sample of at least one work product that provides supporting evidence that the applicant meets the requirements at subdivisions (a)(1) and (2) of this section. The work product shall have been produced, in whole or part, by the applicant and shall consist of a final report or other material provided to a client under contract in previous work. For a work product that was jointly produced by the applicant and another entity, the role of the applicant in the work product shall be clearly explained;

(5) documentation that the applicant holds professional liability insurance as required pursuant to subdivision (a)(2)(iii) of this section.

(6) documentation that the applicant has implemented an adequate management protocol to address and remedy any conflict of interest issues that may arise, as required pursuant to subdivision (a)(2)(iv) of this section.

(c) *Agency action on applications for accreditation.* The Agency shall approve or deny a complete application for accreditation within 45 days after submission. Upon approval of an application for accreditation, the independent verifier shall be accredited for a period of three years from the date of application approval.

(d) *Reciprocity.* Independent verifiers accredited in other participating states may be deemed to be accredited in the State of Vermont, at the discretion of the Agency.

(e) *Conduct of accredited verifiers.*

(1) Prior to engaging in verification services for an offset project

sponsor, the accredited verifier shall disclose all relevant information to the Agency to allow for an evaluation of potential conflict of interest with respect to an offset project, offset project developer, or project sponsor. The accredited verifier shall disclose information concerning its ownership, past and current clients, related entities, as well as any other facts or circumstances that have the potential to create a conflict of interest.

(2) Accredited verifiers shall have an ongoing obligation to disclose to the Agency any facts or circumstances that may give rise to a conflict of interest with respect to an offset project, offset project developer, or project sponsor.

(3) The Agency may reject a verification report and certification statement from an accredited verifier, submitted as part of a consistency application required pursuant to subsection 22-1005(b) or submitted as part of a monitoring and verification report submitted pursuant to subsection 22-1007(b), if the Agency determines that the accredited verifier has a conflict of interest related to the offset project, offset project developer, or project sponsor.

(4) The Agency may revoke the accreditation of a verifier at any time given cause, for the following:

(i) failure to fully disclose any issues that may lead to a conflict of interest situation with respect to an offset project, offset project developer, or project sponsor;

(ii) the verifier is no longer qualified due to changes in staffing or other criteria;

(iii) negligence or neglect of responsibilities pursuant to the

requirements of this Subchapter; and

- (iv) intentional misrepresentation of data or other intentional fraud.

22-1007 Award and Recordation of CO₂ offset allowances.

- (a) *Quantities of CO₂ offset allowances awarded, and subsequently recorded.*

- (1) *Award of CO₂ offset allowances.*

- (i) *CO₂ emissions offset projects.* Following the issuance of a consistency determination under subdivision 22-1005(e)(2) and the approval of a monitoring and verification report under the provisions of subsection (e) of this section, the Agency will award one CO₂ offset allowance for each ton of demonstrated reduction in CO₂ or CO₂ equivalent emissions or sequestration of CO₂.

- (ii) *CO₂ emissions credit retirement.* If a project sponsor received a consistency determination pursuant to subdivision 22-1005(e)(2), one CO₂ offset allowance will be awarded for each ton of reduction of CO₂ or CO₂ equivalent or sequestration of CO₂, represented by the relevant credits or allowances retired. If a credit or allowance is represented in metric tons, 1.1023 tons will be awarded for every metric ton, provided that total CO₂ offset allowances awarded shall be rounded down to the nearest whole ton.

- (2) *Recordation of CO₂ offset allowances.* After CO₂ offset allowances are awarded under subdivision 22-1007(a)(1), the Agency shall record such CO₂ offset allowances in the project sponsor's general account.

- (b) *Deadlines for submittal of monitoring and verification reports.*

(1) For CO₂ emissions offset projects undertaken prior to January 1, 2009, the project sponsor must submit the monitoring and verification report covering the pre-2009 period by June 30, 2009.

(2) For CO₂ emissions offset projects undertaken on or after January 1, 2009, the monitoring and verification report must be submitted within 6 months following the completion of the last calendar year during which the offset project achieved CO₂ equivalent reductions or sequestration of CO₂ for which the project sponsor seeks the award of CO₂ offset allowances.

(c) *Contents of monitoring and verification reports.* For an offset project, the monitoring and verification report must be in a format approved by the Agency and include the following information.

(1) The project's sponsor's name, address, e-mail address, telephone number, facsimile transmission number, and account number.

(2) The CO₂ emissions reduction or CO₂ sequestration determination made in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects, including a demonstration that the project sponsor complied with the required quantification, monitoring, and verification procedures under section 22-1005, as well as those outlined in the consistency application approved pursuant to subdivision 22-1005(e)(2).

(3) A signed statement that reads "The undersigned project sponsor hereby confirms and attests that the offset project upon which this monitoring and verification report is based is in full compliance with all of the requirements of Subchapter X

of Vermont's CO₂ Budget Trading Program Regulations. The project sponsor holds the legal rights to the offset project, or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO₂ offset allowances under Subchapter X is contingent on meeting the requirements of Subchapter X. I authorize the Agency or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in the consistency application that was the subject of a consistency determination by the Agency. I understand that this right to audit shall include the right to enter the physical location of the offset project. I submit to the legal jurisdiction of the State of Vermont.”

(4) A certification signed by the offset project sponsor certifying that all offset projects for which the sponsor has received offset allowances under this Subchapter (or similar provisions in the rules of other participating states), under the sponsor's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the sponsor) are in compliance with all applicable requirements of the CO₂ Budget Trading Program in all participating states.

(5) A verification report and certification statement signed by an independent verifier accredited pursuant to section 22-1006 that documents that the independent verifier has reviewed the monitoring and verification report and evaluated the following in relation to the consistency application approved pursuant to subdivision 22-1005(e)(2), and the Agency's Procedure for CO₂ Offset Emissions Projects.

(i) The adequacy and validity of information supplied by the project sponsor to determine CO₂ emissions reductions or CO₂ sequestration in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects.

(ii) The adequacy and consistency of methods used to quantify, monitor, and verify CO₂ emissions reductions and CO₂ sequestration in accordance with the Agency's Procedure for CO₂ Offset Emissions Projects and as outlined in the consistency application approved pursuant to subdivision 22-1005(e)(2).

(iii) Such other evaluations and verification reviews as may be required by the Agency. The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of section 22-1005.

(6) Disclosure of any voluntary or mandatory programs, other than the CO₂ Budget Trading Program, to which greenhouse gas emissions data related to the offset project has been, or will be reported.

(7) For offset projects located in a state or United States jurisdiction that is not a participating state, a demonstration that the project sponsor has complied with all requirements of the cooperating regulatory agency in the state or United States jurisdiction where the offset project is located.

(d) *Place for filing monitoring and verification reports.* The monitoring and verification report must be filed with the same Agency that issued the consistency determination for the offset project pursuant to subdivision 22-1005(e)(2).

(e) *Agency action on monitoring and verification reports.* The Agency will approve or deny a complete monitoring and verification report within 90 days following receipt of a complete report. A complete monitoring and verification report is one that is in a format approved by the Agency and is determined by the Agency to be complete for the purpose of commencing review of the monitoring and verification report. In no event shall a

completeness determination prevent the Agency from requesting additional information in order to enable the Agency to approve or deny a monitoring and verification report filed under this section.