

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES**

Notice of Public Hearing and Comment Period

Concerning proposed Amendments to Air Pollution Control Regulations No. 46 “CO₂ Budget Trading Program” and Air Pollution Control Regulations No. 47 “CO₂ Budget Trading Program Allowance Distribution”

Notice is hereby given that a public hearing regarding proposed amendments to Air Pollution Control Regulations No. 46 “CO₂ Budget Trading Program” and Air Pollution Control Regulations No. 47 “CO₂ Budget Trading Program Allowance Distribution”, will be held in Room 230 of the Department of Environmental Management, at 235 Promenade Street, Providence, Rhode Island on Friday November 22, 2013 at 1:00 p.m., at which time interested parties will be heard.

The Regional Greenhouse Gas Initiative (RGGI) is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. Each participating state’s CO₂ Budget Trading Program is based on the 2008 RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have completed a 2012 Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, imports and emissions leakage, and offsets.

Amendments to the Model Rule were developed by the RGGI state staff as part of the Program Review. This effort was supported by an extensive regional stakeholder process that engaged the regulated community, environmental non-profits, and other organizations with technical expertise in the design of cap-and-trade programs.

As a result of the program review process described above, The Department of Environmental Management proposes to amend the Rhode Island CO₂ Budget Trading Program Regulations to incorporate the changes made in the RGGI Model Rule.

DEM has complied with the requirements of R.I. Gen. Laws Section 42-35-3 by considering alternative approaches to the proposed regulations and has determined that there is no alternative approach that would be as effective and less burdensome. DEM has also determined that the proposed regulations do not overlap or duplicate any other state regulation. DEM has complied with the requirements of R.I. Gen. Laws Section 42-35-3.3, 42-35.1-3 and 42-35.1-4 by preparing an Economic Impact Statement and a Regulatory Flexibility Analysis and providing these to the Office of Regulatory Reform.

Copies of the proposed amendments and a Fact Sheet are available at the Office of Air Resources at 235 Promenade Street, Providence, Rhode Island or on the Department's web site at www.dem.ri.gov. Written comments on the proposed amendments may be sent to the Office of Air Resources at the above address until 4:00 PM, November 27, 2013, at that time the comment period will end, unless extended by the hearing officer. It is requested that persons who wish to make oral comments during the public hearing submit a copy of their statement for the record. Members of the Office of Air Resources may question commenters concerning their remarks.

The Department of Environmental Management building is accessible to those with disabilities. Persons with disabilities requiring accommodation should contact the Office of Air Resources at

TCDD (401) 222-6800, or (401) 222-2808, or toll free at 1-800-752-8088, at least three business days prior to the hearing.

Signed this 25th day of October, 2013.

Douglas L. McVay, Chief
Office of Air Resources

FACT SHEET

In re: Proposed Amendments to Air Pollution Control Regulations No. 46 “CO₂ Budget Trading Program” and Air Pollution Control Regulations No. 47 “CO₂ Budget Trading Program Allowance Distribution”

Need for adoption of amendments to the Rhode Island CO₂ Budget Trading Program Regulations No. 46 and No. 47

The Regional Greenhouse Gas Initiative (RGGI) is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. Each participating state’s CO₂ Budget Trading Program is based on the 2008 RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have completed a 2012 Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, imports and emissions leakage, and offsets.

Amendments to the Model Rule were developed by the RGGI state staff as part of the Program Review. This effort was supported by an extensive regional stakeholder process that engaged the regulated community, environmental non-profits, and other organizations with technical expertise in the design of cap-and-trade programs.

Introduction

As a result of the program review process described above, The Department of Environmental Management proposes to amend the Rhode Island CO₂ Budget Trading Program Regulations to incorporate the changes made in the RGGI Model Rule.

Overview

Summary of the proposed RGGI Regulations Amendments:

1. Size and Structure of Cap and Allowance Apportionment

The Regional Emissions Cap in 2014 will be equal to 91 million tons. The Model Rule language maintains the original 2.5% per year reduction to the regional RGGI cap for the years 2015 through 2020.

2. Budget Adjustments

The Model Rule contains language to address the private bank of allowances through two distinct budget adjustments.

The First Control Period Interim Adjustment for Banked Allowances (first adjustment), adjusts the budget for 100 percent of the first control period private bank

of allowances (vintages 2009, 2010, & 2011) held by market participants as of the end of the first control period, that are in addition to the total quantity of first control period emissions. The first adjustment timing and algorithm is spelled out in the Model Rule and is made over the 7 year period 2014-2020.

The Second Control Period Interim Adjustment for Banked Allowances (second adjustment), adjusts the budget for 100 percent of the 2012 and 2013 vintage allowances held by market participants as of the end of 2013, that are in addition to the total quantity of 2012 and 2013 emissions. The second adjustment timing and algorithm is spelled out in the Model Rule and is made over the 6 year period 2015-2020 after the actual size of the 2012 and 2013 vintage private bank is determined.

3. Interim Control Periods

The Model Rule creates interim control periods that include the following components:

The addition of new defined terms, including:

- “Interim Control Period,” defined as each of the first two calendar years of each three-year control period.
- “Excess Interim Emissions,” defined as any emissions (multiplied by 0.50) over the amount of allowances held at the end of each Interim Control Period.
- A new general requirement for sources to hold allowances to cover 50% of emissions for each Interim Control Period, subject to the existing true-up process and a March 1 deadline.
- The final compliance true-up at the end of the three-year control period will continue to require sources to hold allowances to cover 100% of the emissions for the three years.
- The allowances already deducted to meet each of the two annual Interim Control Period obligations will be subtracted from the three-year compliance true-up obligation.
- Each ton of Excess Interim Emissions will be considered a violation, subject to the ordinary existing enforcement provisions of the relevant agency on an annual basis.
- There will *not* be a “treble damages” provision for Excess Interim Emissions.
- The existing “treble damages” provision, for any excess emissions at the end of the three-year control period, will remain unchanged.

- The deletion of existing triggers, “market settling period”, and other regulatory terms related to the potential to extend the control period to four years.

4. Cost Containment Reserve

The Model Rule contains language for the creation and use of a cost containment reserve (CCR) that will provide flexibility and cost containment for the program. The CCR would consist of a fixed quantity of allowances, in addition to the cap, that would be held in reserve, and are only to be made available for sale if allowance prices were to exceed predefined price levels.

- a. The Model Rule contains language for an annual CCR withdrawal limit of 5 million allowances in 2014, and an annual CCR withdrawal limit of 10 million allowances thereafter. The CCR would initially be populated in 2014, and in subsequent years would be replenished only as needed to maintain the withdrawal limit.
- b. Allowances from the CCR would be fully fungible.
- c. The CCR allowances would be made available immediately in any auction in which demand for allowances at prices above the CCR trigger price exceeds the supply of allowances offered for sale in that auction prior to the addition of any CCR allowances.
- d. If the CCR is triggered, the CCR allowances will only be sold at or above the CCR trigger price.
- e. CCR Triggers Prices: \$4 in 2014, \$6 in 2015, \$8 in 2016, and \$10 in 2017. Each year after 2017, the CCR trigger price will increase by 2.5%.

5. Offset Trigger Mechanisms

The Model Rule deletes the existing offset price triggers, that raise the allowable percentage of offsets and that allow the use of international CO₂ emission credit retirements.

The allowable offset percentage would remain at 3.3%, and only those offset credits that satisfy all Model Rule requirements for a specific project category (including any new categories added) may be used for compliance. These changes are consistent with the decision to add a CCR mechanism and address the need for cost control in a much more transparent and predictable way.

6. Control Period Extension

The Model Rule deletes the potential extension of the control period to four years and is replaced by the CCR.

7. Offsets

The Model Rule contains language that provides a new offset category known as “Sequestration of carbon due to reforestation, improved forest management or avoided conversion” that States may adopt in lieu of the existing Afforestation category.

A RGGI U.S. Forests Offset Protocol has been developed, based mainly on the California Air Resources Board (CARB) U.S. Forests Offset Protocol, to include:

- Improved Forest Management;
- Avoided Conversion; and
- Reforestation (which would replace the existing RGGI Afforestation category type).

SF6 Offset Category

The Model Rule deletes the language referring to consistency applications associated with reductions in emissions of sulfur hexafluoride that were filed prior to 2009 in accordance with Section 10.5(b)(3), as those requirements are no longer applicable.

End-Use Energy Efficiency Offsets Category

The Model Rule deletes language for offset projects commenced prior to January 1, 2009.

Incorporation by Reference

The Model Rule contains updates for all documents incorporated by reference

8. Miscellaneous

a. Reserve Price

The Model Rule contains language to simplify the reserve price. The Model Rule increases the minimum reserve price by 2.5 percent each year and eliminates the text for current market reserve price.

b. Early Reduction Allowances

The Model Rule deletes the ERA provisions as they are no longer applicable to the program.

c. Undistributed and Unsold CO2 Allowances

The Model Rule contains language to provide the ability to retire undistributed and unsold allowances at the end of each control period, subject to each state’s statutory and/or administrative process.

Demonstration of Need

As mentioned above, RGGI is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. Each participating state's CO₂ Budget Trading Program is based on the RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. Changes to the Model Rule are being adopted in each of the RGGI participating states to chance the RGGI program beginning in 2014. Rhode Island is proposing these changes to maintain consistency with the other RGGI participating states.

Alternative Approaches Considered

No alternate approaches were considered due to the regional nature of the CO₂ Program. Changes developed in the RGGI Model Rule are being incorporated into the Rhode Island Regulations, which were based on the original RGGI Model Rule.

Identification of Overlapped or Duplicated State Regulations

The Office of Air Resources has identified no state regulations that overlap or duplicate the proposed amendments.

For more information or copies of the proposed amendments contact:

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES

AIR POLLUTION CONTROL REGULATION NO. 46

CO₂ Budget Trading Program



Effective: July 22, 2008

Last Amended December xx, 2013

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES

AIR POLLUTION CONTROL REGULATION NO. 46

CO₂ Budget Trading Program

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES
AIR POLLUTION CONTROL REGULATION NO. 46
CO₂ Budget Trading Program

46.1. **Definitions**

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in these regulations, the following terms shall, where the context permits, be construed as follows:

- 46.1.1 **“Account number”** means the identification number given by the Department or its agent to each CO₂ Allowance Tracking System account.
- 46.1.2 **“Acid rain emissions limitation”** means, 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 federal Clean Air Act.
- 46.1.3 **“Acid Rain Program”** means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the federal Clean Air Act and 40 CFR Parts 72 through 78.
- 46.1.4 **“Administrator”** means the Administrator of the United States Environmental Protection Agency or the Administrator’s authorized representative.
- 46.1.5 **“Agent”** means an independent contractor, United States Environmental Protection Agency (USEPA), consumer trustee, or other entity including a regional entity.
- 46.1.6 **“Allocate” or “allocation”** means the determination by the Department of the number of CO₂ allowances to be recorded in the Voluntary Renewable Energy Market Set-aside Account or the Rhode Island Auction/Sale Account.
- 46.1.7 **“Allocation period”** means the maximum number of years for which the Department may award CO₂ offset allowances to a project for a given consistency determination pursuant to section 46.13.
- 46.1.8 **“Allocation year”** means a calendar year for which the Department allocates or awards CO₂ allowances pursuant to sections 46.4 and 46.13. The

allocation year of each CO₂ allowance is reflected in the unique identification number given to the allowance pursuant to subsection 46.8.4(b).

46.1.9 **“Allowance auction or auction”** means an auction in which the Department or its agent offers CO₂ allowances for sale

46.1.946.1.10 **“Alternate CO₂ authorized account representative”** means 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 section 46.5, 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 section 46.8, to transfer or otherwise dispose of CO₂ allowances held in the general account. If the CO₂ budget source is also subject to the Acid Rain Program, then for a CO₂ Budget Trading Program compliance account, this natural person shall be the same person as the designated representative under the Acid Rain Program.

46.1.1046.1.11 **“Anaerobic digester”** means 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.

46.1.1146.1.12 **“Anaerobic digestion”** means the degradation of organic material including manure brought about through the action of microorganisms in the absence of elemental oxygen.

46.1.1246.1.13 **“Anaerobic storage”** means storage of organic material in an oxygen-free environment, or under oxygen-free conditions, including but not limited to, holding tanks, ponds, and lagoons.

46.1.1346.1.14 **“ANSI”** means American National Standards Institute.

46.1.1446.1.15 **“ASHRAE”** means American Society of Heating, Refrigerating and Air-Conditioner Engineers.

46.1.1546.1.16 **“Attribute”** means 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.

46.1.1646.1.17 **“Attribute credit”** means the attributes related to one megawatt-hour of electricity generation.

46.1.1746.1.18 **“Automated data acquisition and handling system” or “DAHS”** means that component of the continuous emissions monitoring system, or other emissions monitoring system approved for use under sections 46.9 and 46.10, 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 section 46.9 and 46.10.

46.1.1846.1.19 **“Award”** means the determination by the Department of the number of ~~CO₂ allowances to be recorded in the compliance account of a CO₂ budget unit for Early Reduction CO₂ Allowances pursuant to section 46.4, or the determination by the Department of the number of~~ CO₂ offset allowances to be recorded in the general account of a project sponsor pursuant to section 46.13. Award is a type of allocation.

46.1.1946.1.20 **“Billing meter”** means a measurement device used to measure electric or thermal output for commercial billing under a contract where the facility selling the electric or thermal output has different owners from the owners of the party purchasing the electric or thermal output.

46.1.2046.1.21 **“Biogas”** means the gas resulting from the decomposition of organic matter under anaerobic conditions. The principle constituents of which are methane and carbon dioxide.

46.1.2146.1.22 **“Boiler”** means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

46.1.2246.1.23 **“Boiler (commercial)”** means a self contained, low pressure appliance for supplying steam or hot water to a commercial building.

46.1.2346.1.24 **“Boiler (residential)”** means a self contained, low-pressure appliance for supplying steam or hot water to a residential building.

46.1.2446.1.25 **“British thermal unit” or “Btu”** means the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.

46.1.26 **“Building envelope”** means the elements of a building that separate conditioned space from unconditioned space, or that enclose semi-heated space, through which thermal energy may be transferred to or from the exterior, unconditioned space, or conditioned space including all elements that separate the interior of a building from the outdoor environment, including walls, windows, foundation, basement slab, ceiling, roof, and insulation.

46.1.27 **“Cost containment reserve trigger price, or CCR trigger price”** means the CCR trigger price is the minimum price at which CO₂ CCR allowances are offered for sale by the Department or its agent at an auction. The CCR trigger price shall be \$4.00 per CO₂ Allowance for calendar year 2014, \$6.00 per CO₂ Allowance in calendar year 2015, \$8.00 per CO₂ Allowance in calendar year 2016, and \$10.00 per CO₂ Allowance in calendar year 2017. Each calendar year thereafter, the CCR trigger price shall be 1.025 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent.

46.1.2646.1.28 **“CO₂”** means carbon dioxide.

46.1.2746.1.29 **“CO₂ allowance”** means a limited authorization by the Department 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 regulation.

46.1.2846.1.30 **“CO₂ allowance deduction” or “deduct CO₂ allowances”** means the permanent withdrawal of CO₂ allowances by the Department 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 or an interim control period, determined in accordance with sections 46.9 and 46.10, or for the forfeit or retirement of CO₂ allowances as provided by this regulation.

46.1.29 **“CO₂ allowance price”** ~~means the price for CO₂ allowances in the CO₂ Budget Trading Program for a particular time period as determined by the Department or its agent, calculated based on a volume-weighted average of transaction prices reported to the department or its agent, and taking into account prices as reported publicly through reputable sources.~~

46.1.3046.1.31 **“CO₂ allowances held” or “hold CO₂ allowances”** means the CO₂ allowances recorded by the Department or its agent, or submitted to the Department or its agent for recordation, in accordance with sections 46.7 and 46.8, in a CO₂ Allowance Tracking System account.

46.1.3146.1.32 **“CO₂ Allowance Tracking System”** means the system by which the Department 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.

46.1.3246.1.33 **“CO₂ Allowance Tracking System account”** means an account in the CO₂ Allowance Tracking System established by the Department or its agent for

purposes of recording the allocation, holding, transferring, or deducting of CO₂ allowances.

46.1.3346.1.34 “**CO₂ allowance transfer deadline**” means midnight of the March 1 occurring after the end of the relevant control period and each relevant interim 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 under subsection 46.3.1 for the control period and each interim control period immediately preceding such deadline.

46.1.3446.1.35 “**CO₂ authorized account representative**” means 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 section 46.5, 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 section 46.8 to transfer or otherwise dispose of CO₂ allowances held in the general account. If the CO₂ budget source is also subject to the Acid Rain Program, then for a CO₂ Budget Trading program compliance account, this natural person shall be the same person as the designated representative under the Acid Rain program.

46.1.3546.1.36 “**CO₂ budget emissions limitation**” means for a CO₂ budget source, the tonnage equivalent, in CO₂ emissions in a control period or an interim control period, of the CO₂ allowances available for compliance deduction for the budget source for a control period or an interim control period.

46.1.3646.1.37 “**CO₂ budget permit**” means the legally binding written document or portion of a title V operating permit, issued by the Department under this regulation to a CO₂ budget source or CO₂ budget unit that 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.

46.1.3746.1.38 “**CO₂ budget source**” means a source that includes one or more CO₂ budget units.

46.1.3846.1.39 “**CO₂ Budget Trading Program**” means a multi-state CO₂ emissions reduction program established pursuant to this regulation and corresponding regulations in other states as a means of reducing emissions of CO₂ from CO₂ budget sources.

46.1.40 “CO₂ budget unit” means a unit that is subject to the CO₂ Budget Trading Program requirements under section 46.2.

46.1.41 **“CO₂ cost containment reserve allowance or CO₂ CCR allowance”** means a CO₂ allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO₂ Allowances. CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Rhode Island CO₂ Budget Trading Program base and adjusted budgets. CO₂ CCR allowances are subject to all applicable limitations contained in this regulation.

46.1.4046.1.42 **“CO₂ equivalent” or “CO₂e”** means the quantity, in tons, of a given greenhouse gas multiplied by its global warming potential.

46.1.4146.1.43 **“CO₂ offset allowance”** means a CO₂ allowance that is awarded to the sponsor of a CO₂ emissions offset project pursuant to subsection 46.13.6 and is subject to the relevant compliance deduction limitations of 46.8.5(a)(3).

46.1.4246.1.44 **“Combined cycle system”** means 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.

46.1.4346.1.45 **“Combustion turbine”** means 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.

46.1.4446.1.46 **“Commence commercial operation”** means 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 46.2 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 46.2 on the date the unit commences commercial operation, the date the unit becomes a CO₂ budget unit under section 46.2 shall be the unit's date of commencement of commercial operation.

46.1.4546.1.47 **“Commence operation”** means to have begun 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 subsection 46.2 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 subsection 46.2 on the date of commencement of operation, the date the unit becomes a CO₂ budget unit under subsection 46.2 shall be the unit's date of commencement of operation.

46.1.4646.1.48 “**Commercial building**” means a building to which the provisions of ANSI/ASHRAE/IESNA Standard 90.1-2007 apply, except single family homes, multifamily residential structures of three stories or fewer above grade, and manufactured homes (modular and mobile).

46.1.4746.1.49 “**Compliance account**” means a CO₂ Allowance Tracking System account, established by the Department or its agent for a CO₂ budget source under section 46.8, in which the CO₂ allowances for the source are held and available for use by the source for a control period and each interim control period for the purpose of meeting the CO₂ requirements of subsection 46.3.1.

46.1.4846.1.50 “**Conflict of interest**” means 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.

46.1.4946.1.51 “**Condensing mode**” means the design and operation of furnaces or boilers in a mode that leads to the production of condensate in flue gases.

46.1.5046.1.52 “**Continuous emissions monitoring system**” or “**CEMS**” means the equipment required under sections 46.8 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS) and 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 sections 46.9 and 46.10.

46.1.5146.1.53 “**Control period**” means a three calendar-year period, ~~unless extended to four years upon occurrence of a stage two trigger event.~~ The first control period is from January 1, 2009 to 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.~~ The first two calendar years of each control period are each defined as an interim control period, beginning

inon January 1, 2015

46.1.5246.1.54 **“Cooperating regulatory agency”** means 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 noncompliance with this regulation.

46.1.5346.1.55 **“DAHS”** means data acquisition and handling system.

46.1.5446.1.56 **“Department”** means the Rhode Island Department of Environmental Management.

46.1.5546.1.57 **“Eligible biomass”** means sustainably harvested woody and herbaceous fuel sources that are available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, unadulterated wood and wood residues, animal wastes, other clean organic wastes not mixed with other solid wastes, and biogas derived from such fuel sources. Liquid biofuels do not qualify as eligible biomass. Sustainably harvested will be determined by the Department.

46.1.5646.1.58 **“Energy conservation measure” or “ECM” or “energy efficiency measure” or “EEM”** means an activity or a set of activities designed to increase the energy efficiency of a building or improve the management of energy demand and may include, but not be limited to, physical changes to facility equipment, modifications to a building, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the building or operations and maintenance staff.

46.1.5746.1.59 **“Energy performance”** means a measure of the relative energy efficiency of a building, building equipment, or building components, as measured by the amount of energy required to provide building services. For building equipment and components, a relative measure of the impact of equipment or components on building energy usage.

46.1.5846.1.60 **“Energy services”** means the provision of useful services to building occupants, such as heating and hot water, cooling, and lighting.

46.1.5946.1.61 **“Excess emissions”** means any tonnage of CO₂ emitted by a CO₂ budget source during a control period that exceeds the CO₂ budget emissions limitation for the source.

- 46.1.62 **“Excess interim emissions”** means any tonnage of CO₂ emitted by a CO₂ budget source during an interim control period multiplied by 0.50 that exceeds the CO₂ budget emissions limitation for the source.
- 46.1.63 **“First control period interim adjustment for banked allowances”** means an adjustment applied to the NAME OF RELEVANT RGGI STATE CO₂ Budget Trading Program base budget for allocation years 2014 through 2020 to address the surplus allocation year 2009, 2010, and 2011 allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO₂ Budget Trading Program, but not including accounts opened by participating states.
- 46.1.64 **“Forested conditionoffset project”** means an offset project involving reforestation, improved forest management, or avoided conversion.
- 46.1.65 **“Forest offset project data report”** means the report prepared by a project sponsor each year that provides the information and documentation required by this Subpart or the forest offset protocol
- 46.1.66 **“Forest offset protocol”** means the protocol titled “Regional Greenhouse Gas Initiative Offset Protocol U.S. Forest Projects”, published by the participating states on June 13, 2013 (available at <http://www.dem.ri.gov/rggi/pdf/revdoc13.pdf>) ~~and that:~~
- (a) ~~Is at least 1.0 acre in size and 120.0 feet wide measured stem-to-stem from the outer-most edge with forested strips that must be 120.0 feet wide for a continuous length of at least 363.0 feet in order to meet the acre threshold; and~~
 - (b) ~~Meets at least one of the two following stocking criteria:~~
 - (1) ~~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 land 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~~
 - (2) ~~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.~~

~~(a)46.1.67~~ **“Fossil fuel”** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

~~(b)~~46.1.68 **“Fossil fuel-fired”** means:

~~(e)~~(a) With regard to a unit that commenced operation prior to January 1, 2005, 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.

(b) With regard to a unit that commenced operation on or after January 1, 2005, 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 5 percent of the annual heat input on a Btu basis during any year.

~~46.1.63~~46.1.69 **“Furnace (residential)”** means a self-contained, indirect-fired appliance that supplies heated air to a residential building through ducts to conditioned spaces.

~~46.1.64~~46.1.70 **“General account”** means a CO₂ Allowance Tracking System account, established under section 46.8 that is not a compliance account.

~~46.1.65~~46.1.71 **“Global warming potential” or “GWP”** means 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. Global Warming Potentials used in this regulation are consistent with the values used in the Intergovernmental Panel on Climate Change, ~~Third~~ Fourth Assessment report, ~~the Scientific Basis (Working Group I), chapter 6, section 12, pages (385–391) (2001).~~

~~46.1.66~~46.1.72 **“Gross generation”** means the electrical output in MWe at the terminals of the generator.

~~46.1.73~~ **“Interim control period”** means a one-calendar-year time period, during each of the first and second calendar years of each three year control period. The first interim control period starts on January 1, 2015 and ends on December 31, 2015, inclusive. The second interim control period starts on January 1, 2016 and ends on December 31, 2016, inclusive. Each successive three year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

~~46.1.67~~46.1.74 **“HVAC system”** means a system or systems that provide, either collectively or individually, heating, ventilation, or air conditioning to a building, including the equipment, distribution network, and terminals.

46.1.6846.1.75 “**Hr**” means hour.

46.1.6946.1.76 “**IESNA**” means the Illuminating Engineering Society of North America.

46.1.77 “**Independent verifier**” means an individual that has been approved by the Department or its agent to conduct verification activities with regard to CO₂ emissions offset projects.

46.1.78 “**Intentional Reversal**” means any reversal caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the offset project boundary.

46.1.7146.1.79 “**Lb**” means pound.

46.1.7246.1.80 “**Life-of-the-unit firm power contractual arrangement**” means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit’s total costs, pursuant to a contract:

- (a) For the life of the unit; or
- (b) For a cumulative term of no less than 25 years, including contracts that permit an election for early termination; or
- (c) 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.

46.1.7346.1.81 “**Market penetration rate**” means a measure of the diffusion of a technology, product, or practice in a defined market, as represented by the percentage of annual sales for a product or practice, or as a percentage of the existing installed stock for a product or category of products, or as the percentage of existing installed stock that utilizes a practice.

46.1.74 “**Market settling period**” means the first fourteen months of any control period.

46.1.7546.1.82 “**Maximum design heat input**” means 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.

46.1.7646.1.83 “**Maximum potential hourly heat input**” means 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).

46.1.84 **“Minimum reserve price”** means the minimum reserve price in calendar year 2014 shall be \$2.00. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

46.1.7746.1.85 **“Monitoring system”** means any monitoring system that meets the requirements of section 46.9, including a continuous emission monitoring system, an excepted monitoring system, or an alternative monitoring system.

46.1.7846.1.86 **“Megawatt” or “MW”** means a unit of power equal to 1000 kilowatts or 1,000,000 watts.

46.1.7946.1.87 **“MMBtu”** means one million British thermal units.

46.1.8046.1.88 **“MWe”** means megawatt electrical.

46.1.8146.1.89 **“Megawatt-hour” or “MWH”** means the amount of power (in megawatts) used or produced in an hour.

46.1.8246.1.90 **“Nameplate capacity”** means the maximum electrical output (in MWe) that an electric generating unit 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.

46.1.8346.1.91 **“Non-census water”** means streams, sloughs, estuaries and canals more than 120 feet and less than 1/8 of a mile wide and lakes, reservoirs and ponds 1 to 40 acres in size.

~~46.1.84~~ **“Non-forested condition”** means 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. Land intermingled with forest areas, unimproved roads and non-forest strips and more than 120.0 feet wide, and clearings more than one acre in size, are not non-forest condition land.

46.1.8546.1.92 **“Offset project”** means 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 subsection 46.13.3.

| ~~46.1.86~~46.1.93 **“On-site combustion”** means the combustion of fossil fuel at a building to provide heat, hot water or electricity.

| ~~46.1.87~~46.1.94 **“Operator”** means 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.

46.1.8846.1.95 “**Owner**” means any of the following persons:

- (a) Any holder of any portion of the legal or equitable title in a CO₂ budget unit; or
- (b) 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
- (c) 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
- (d) 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.

46.1.8946.1.96 “**Participating state**” means a state that has established a corresponding regulation as part of the CO₂ Budget Trading Program.

46.1.9046.1.97 “**Passive solar**” means a combination of building design features and building components that utilize solar energy to reduce or eliminate the need for mechanical heating and cooling and daytime artificial lighting.

46.1.9146.1.98 “**Permanently retired**” means a CO₂ allowance or CO₂ offset allowance that has been placed in a retirement account controlled by the jurisdiction that generated the CO₂ allowance or CO₂ offset allowance, or has been placed in an allowance retirement account controlled by the Department, or is otherwise determined by the Department to have been rendered unusable.

46.1.9246.1.99 “**Project commencement**” means 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. For an offset project involving reforestation, improved forest management, or avoided conversion, the date specified in section 3.2 of the forest offset protocol.

46.1.9346.1.100 “**RESNET**” means the Residential Energy Services Network.

46.1.9446.1.101 **“Receive” or “receipt of”** means, when referring to the Department 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 Department or its agent in the regular course of business.

46.1.9546.1.102 **“Recordation,” “record” or “recorded”** means, with regard to CO₂ allowances, the movement of CO₂ allowances or CO₂ offset allowances by the Department or its agent from one CO₂ Allowance Tracking System account to another for purposes of allocation, transfer or deduction.

46.1.9646.1.103 **“Regional-type anaerobic digester”** means an anaerobic digester using feedstock from more than one agricultural operation, or importing feedstock from more than one agricultural operation. Also referred to as a “community digester” or “centralized digester.”

46.1.9746.1.104 **“Renewable energy”** means electricity generated from biomass, wind, solar thermal, photovoltaic, geothermal, hydroelectric facilities certified by the Low Impact Hydroelectric Institute, wave and tidal action and fuel cells powered by renewable fuels.

46.1.9846.1.105 **“Renewable portfolio standard”** means 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.

46.1.106 **“Reporting Period”** means the period of time covered by a forest offset project data report. The first reporting period for an offset project in an initial crediting period may consist of 6 to 24 consecutive months; all subsequent reporting periods in an initial crediting and all reporting periods in any renewed crediting period must consist of 12 consecutive month.

46.1.107 **“Reserve Price”** means the minimum acceptable price for each CO₂ allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in 46.1.27.

46.1.9946.1.108 **“Residential building”** means a low-rise structure used as a single family home of three or fewer stories above grade, or a modular or mobile manufactured home for which the provisions of ANSI/ASHRAE/IESNA Standard 90.1-2007 do not apply.

46.1.109 **“ Reversal”** means A GHG emission reduction or GHG removal enhancement for which CO₂ offset allowances have been issued that is

subsequently released or emitted back into the atmosphere due to any intentional or unintentional circumstance.

46.1.110 **“Rhode Island Auction/Sale Account”** means an account administered by the Department or its agent for purposes of auctioning or selling CO₂ allowances.

46.1.111 **“Rhode Island CO₂ Budget Trading Program adjusted budget”** means the Rhode Island CO₂ Budget Trading Program adjusted budget is determined in accordance with section 5.3 and is the annual amount of CO₂ tons available in Rhode Island for allocation in a given allocation year, in accordance with the CO₂ Budget Trading Program. CO₂ offset allowances allocated to project sponsors and CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Rhode Island CO₂ Budget Trading Program adjusted budget.

~~46.1.100~~46.1.112 **“Rhode Island CO₂ Budget Trading Program Base Budget”** means the Rhode Island CO₂ Budget Trading Program base budget is specified in 46.4.1. CO₂ offset allowances allocated to project sponsors and CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Rhode Island CO₂ Budget Trading Program Base Budget.

~~46.1.94~~**“Rhode Island CO₂ Budget Trading Program Base Budget”** means the annual amount of CO₂ tons available in Rhode Island for allocation in a given allocation year, in accordance with the CO₂ Budget Trading Program. CO₂ offset allowances and Early Reduction CO₂ Allowances awarded are separate from and additional to CO₂ allowances allocated from the Rhode Island CO₂ Budget Trading Program Base Budget.

46.1.113 **“Second control period interim adjustment for banked allowances”** means an adjustment applied to the Rhode Island CO₂ Budget Trading Program base budget for allocation years 2015 through 2020 to address the allocation year 2012 and 2013 allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO₂ Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of 2012 and 2013 emissions from all CO₂ budget sources in all of the participating states.

~~46.1.102~~46.1.114 **“Serial number”** means, when referring to CO₂ allowances, the unique identification number assigned to each CO₂ allowance by the Department or its agent, under subsection 46.8.4(b).

~~46.1.103~~46.1.115 **“Short ton”** means a measure of weight equal to two thousand pounds or 0.9072 metric tons.

~~46.1.104~~46.1.116 “SF₆” means sulfur hexafluoride.

~~46.1.105~~46.1.117 “SF₆-containing operating equipment” means any equipment that contains SF₆ and is used for the transmission and distribution of electricity.

~~46.1.106~~46.1.118 “Source” means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant under the federal Clean Air Act. For purposes of section 502(c) of the federal Clean Air Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

~~46.1.107~~46.1.119 “Sponsor” or “Project Sponsor” means any person who meets the requirements of the CO₂ authorized account representative for the general account of an eligible CO₂ emissions offset project or CO₂ emissions credit retirement.

~~(e) “Stage one threshold price” means the monetary amount, established as of the first day of each calendar year, derived annually from use of the following formula:~~

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

~~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 Department 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.~~

~~(d) “Stage one trigger event” means 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.~~

~~(e) “Stage two threshold price” means the monetary amount, established as of the first day of each calendar year, derived annually from use of the following formula:~~

$$\text{S2TP}(2005+n) = [\text{S2TP}(2005+(n-1)) \times [\{ \text{CPI}(2005+(n-1)) - \text{CPI}(2005+$$

~~$(n-2) \} / \text{CPI}(2005+(n-2)) + 0.02] + \text{S2TP}(2005+(n-1))$~~

~~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 Department 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.~~

~~(f) “Stage two trigger event” means 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.~~

~~(g) 46.1.120 “State” means 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.~~

~~(h) 46.1.121 “Submit” or “serve” means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:~~

- ~~(a) in person;~~
- ~~(b) by United States Postal Service; or~~
- ~~(c) 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.~~

~~46.1.11446.1.122 “System benefit fund” means the monies collected directly from retail electricity or natural gas ratepayers.~~

~~(i) 46.1.123 “Title V operating permit” means an operating permit issued under Air Pollution Control Regulation No. 29 – “Operating Permits”.~~

~~46.1.11646.1.124 “Ton” or “tonnage” means any short ton. For the purpose of determining compliance with the CO₂ requirements of subsection 46.3.1, total tons for a control period and each interim 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 section~~

46.9 and 46.10, 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.

~~46.1.11~~46.1.125 **“Total solids”** means the total of all solids in a sample. They include the total suspended solids, total dissolved solids, and volatile suspended solids.

~~(j)~~46.1.126 **“Transmission and/or distribution entity”** means the assets and equipment used to transmit and distribute electricity from an electric generator to the electrical load of a customer, including 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.

~~(k)~~46.1.127 ~~**“Twelve month period Unintentional Reversal”**~~ means any reversal, including wildfires or disease that is not the result of the forest owner’s negligence, gross negligence, or willful intent. means 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.

~~(l)~~46.1.128 **“Unit”** means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

~~46.1.121~~46.1.129 **“Unit operating day”** means a calendar day in which a unit combusts any fuel.

~~46.1.130~~ ~~**“Undistributed CO₂ allowances”**~~ means CO₂ allowances originally allocated to a set aside account as pursuant to 46.4.3 (h) that were not distributed.

~~46.1.131~~ ~~**“Unsold CO₂ allowances”**~~ means CO₂ allowances that have been made available for sale in an auction conducted by the Department or its agent, but not sold.

~~46.1.122~~46.1.132 **“Verification”** means the verification by an independent verifier that certain parts of a CO₂ emissions offset project consistency application or measurement, monitoring and verification report conforms to the requirements of section 46.13 of this regulation.

~~46.1.123~~46.1.133 **“Volatile solids”** means the fraction of total solids that is comprised primarily of organic matter.

~~46.1.124~~46.1.134 **“Voluntary renewable energy purchase”** means a purchase of electricity from renewable energy generation or renewable energy attribute

credits by a retail electricity customer on a voluntary basis. Renewable energy includes electricity generated from biomass, wind, solar thermal, photovoltaic, geothermal, hydroelectric facilities certified by the Low Impact Hydropower Institute, wave and tidal action, and fuel cells powered by renewable fuels. The renewable energy generation or renewable energy attribute credits related to such purchases may not be used by the generator or purchaser to meet any regulatory mandate, such as a renewable portfolio standard.

46.1.12546.1.135 **“Voluntary renewable energy market set-aside account”** means an account established by the Department to hold CO₂ allowances that are allocated pursuant to subsection 46.4.3(c).

46.1.12646.1.136 **“Whole-building energy performance”** means the overall energy performance of a building, taking into account the integrated impact on energy usage of all building components and systems.

46.1.12746.1.137 **“Whole-building retrofit”** means any building project that involves the replacement of more than one building system, or set of building components, and also requires a building permit.

46.1.12846.1.138 **“Zero net energy building”** means 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.

46.2 Applicability

46.2.1 General applicability.

- (a) 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 regulation.

46.3 General Requirements

46.3.1 Carbon dioxide requirements.

- ~~(a)~~ ~~(a)~~ 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 subsection 46.8.5, 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, less the CO₂ allowances deducted to meet the requirements with respect to the previous

interim control periods, as determined in accordance with sections 46.8, 46.9 and 46.10 of this regulation.

- (b) 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 46.8.5, 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 interim control period from all CO₂ budget units at the source multiplied by 0.50, as determined in accordance with 46.8, 46.9 and 46.10.
- (bc) Each ton of CO₂ emitted in excess of the CO₂ budget emissions limitation for a control period shall constitute a separate violation of this regulation and applicable State law.
- (d) Each ton of excess interim emissions shall constitute a separate violation of this regulation and applicable state law
- (ee) A CO₂ budget unit shall be subject to the requirements under 46.3.1(a) of this subsection starting on the later of January 1, 2009 or the date on which the unit commences operation.
- (df) CO₂ allowances shall be held in, deducted from, or transferred among CO₂ Allowance Tracking System accounts in accordance with sections 46.4, 46.7 46.8 and subsection 46.13.6 of this regulation.
- (e)g) A CO₂ allowance shall not be deducted, in order to comply with the requirements under 46.3.1(a) of this subsection regulation, for a control period or interim -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 46.3.1(a) of this subsection regulation, beyond the applicable percent limitations set out in 46.8.5(a)(3).
- (fh) A CO₂ allowance under the CO₂ Budget Trading Program is a limited authorization by the Department 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, the CO₂ budget permit or any provision of law shall be construed to limit the authority of the Department or a participating state to terminate or limit such authorization.
- (gi) A CO₂ allowance under the CO₂ Budget Trading Program does not constitute a property right.

46.3.2 Excess emissions requirements.

- (a) The owners and operators of a CO₂ budget source that has excess emissions in any control period, or excess interim emissions for any interim control period shall:
 - (1) Forfeit the CO₂ allowances required for deduction under subsection 46.8.5(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 subsection 46.8.5(d)(2).

46.3.3 Recordkeeping and reporting requirements.

- (a) 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 Department.
 - (1) 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 subsection 46.5.5, 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.
 - (2) All emissions monitoring information, in accordance with sections 46.9, 46.10 and 40 CFR 75.57.
 - (3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO₂ Budget Trading Program.
 - (4) 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.

- (b) 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 sections 46.9, 46.10 and 46.11 of this regulation.

46.3.4 Monitoring requirements.

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 sections 46.9 and 46.10.

46.3.5 Liability.

- (a) 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.
- (b) 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.
- (c) 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.
- (d) Any person who negligently, willingly or knowingly violates any requirement or prohibition of the CO₂ Budget Trading Program or a CO₂ budget permit shall be subject to enforcement pursuant to applicable law.
- (e) Any person who negligently, willingly or knowingly makes a false material statement in any record, submission, or report under the CO₂ Budget Trading Program shall be subject to criminal enforcement pursuant to applicable law.
- (f) Each CO₂ budget source and each CO₂ budget unit shall meet the requirements of the CO₂ Budget Trading Program.

46.3.6 Effect on other authorities.

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 provision of any Air Pollution Control Regulation, the Rhode Island State Implementation Plan, a federally enforceable permit, or the Clean Air Act.

46.3.7 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 State or Federal holiday, the time period shall be extended to the next business day.

46.3.8 Indemnification.

Any and all persons subject to these regulations agree to indemnify and hold the Department harmless in the event of any dispute over their authority to submit any information to the Department and over their appointment as an authorized account representative or an alternate account representative.

46.4 CO₂ Allowance Allocations

46.4.1 Rhode Island CO₂ trading program base budget is as follows:

- (a) The Rhode Island CO₂ Budget Trading Program base budget is 2,284,975~~2,659,239~~ tons ~~annually for the 2009 through~~ 2014 allocation years.
- (b) The Rhode Island CO₂ Budget Trading Program base budget is 2,592,758
2,227,851 tons for ~~the~~ 2015 ~~allocation year~~.
- (c) The Rhode Island CO₂ Budget Trading Program base budget is 2,526,2772,172,154 tons for ~~the~~ 2016 ~~allocation year~~.
- (d) The Rhode Island CO₂ Budget Trading Program base budget is 2,459,7961,357,825 tons for ~~the~~ 2017 ~~allocation year~~.
- (e) The Rhode Island CO₂ Budget Trading Program base budget is 2,393,315
1,323,881 tons, annually for ~~the~~ 2018 ~~allocation year and each succeeding allocation year~~.

(f) The Rhode Island CO₂ Budget Trading Program base budget is 1,290,783 tons, annually for 2019.

(g) The Rhode Island CO₂ Budget Trading Program base budget is 1,258,514 tons, annually for 2020

46.4.2 ~~Timing requirements for CO₂ allowance allocations.~~ Undistributed and Unsold CO₂ Allowances.

(a) The Department may retire undistributed CO₂ allowances at the end of each control period. On or before January 1, 2009, the Department shall allocate the CO₂ allowances for the 2009, 2010, 2011 and 2012 allocation years.

(b) The Department may retire unsold CO₂ allowances at the end of each control period. On or before January 1, 2010 and January 1 of each year thereafter, the Department shall allocate CO₂ allowances for the allocation year that is three years after the applicable deadline for allocation under this subsection.

46.4.3 CO₂ allowance allocations.

Subpart XX-4 The Department shall allocate to the Rhode Island Auction/Sale Account CO₂ allowances to be auctioned or sold in accordance with Air Pollution Control Regulation No. 47 – “CO₂ Budget Trading Program Allowance Distribution”.

(a) CO₂ Allowances available for allocation. For allocation years 2014 through 2020, the Rhode Island CO₂ Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO₂ offset allowances and CO₂ CCR allowances.

(b) Cost Containment Reserve (CCR) allocation. The Department shall allocate CO₂ CCR allowances, separate from and additional to the Rhode Island CO₂ Budget Trading Program base budget set forth in 46.4.1, to the Rhode Island AUCTION ACCOUNT. The CCR allocation is for the purpose of containing the cost of CO₂ allowances. The Department shall allocate CO₂ CCR allowances in the following manner:

(1) The Department shall initially allocate 80,491 CO₂ CCR allowances for calendar year 2014.

(2) On or before January 1, 2015 and each calendar year thereafter, the Department shall allocate CO₂ CCR allowances in an amount equal to 160,987, minus the number of CO₂ CCR allowances that remain in the Rhode Island AUCTION ACCOUNT at the end of the prior calendar year.

(c) First control period interim adjustment for banked allowances. By January 15, 2014, the Department shall determine the first control period interim adjustment for banked allowances quantity for allocation years 2014 through 2020 by the following formula:

$$\text{FCPIABA} = (\text{FCPA}/7) \times \text{RS}\%$$

Where:

FCPIABA is the first control period interim adjustment for banked allowances quantity in tons.

FCPA, first control period adjustment, is the total quantity of allocation year 2009, 2010, and 2011 CO₂ allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO₂ Budget Trading Program, but not including accounts opened by participating states, as reflected in the CO₂ Allowance Tracking System (COATS) on January 1, 2014.

RS% is RELEVANT RGGI STATE'S 2013 BUDGET DIVIDED BY THE 2013 REGIONAL BUDGET.PERCENTAGE OF THE REGIONAL CAP.

(d) Second control period interim adjustment for banked allowances. On March 15, 2014, the Department shall determine the second control period interim adjustment for banked allowances quantity the allocation years 2015 through 2020 by the following formula:

$$\text{SCPIABA} = ((\text{SCPA} - \text{SCPE})/6) \times \text{RS}\%$$

Where:

SCPIABA is the second control period interim adjustment for banked allowances quantity in tons.

SCPA, second control period adjustment, is the total quantity of allocation year 2012 and 2013 CO₂ allowances held in general and compliance

accounts, including compliance accounts established pursuant to the CO₂ Budget Trading Program, but not including accounts opened by participating states, as reflected in the CO₂ Allowance Tracking System (COATS) on March 15, 2014.

SCPE, second control period emissions, is the total quantity of 2012 and 2013 emissions from all CO₂ budget sources in all participating states, reported pursuant to CO₂ Budget Trading Program as reflected in the CO₂ Allowance Tracking System (COATS) on March 15, 2014.

RS% is Rhode Island's 2013 BUDGET DIVIDED BY THE 2013 REGIONAL BUDGET.PERCENTAGE OF THE REGIONAL CAP.

- (e) CO₂ Budget Trading Program adjusted budget 2014. The Department shall determine the Rhode Island CO₂ Budget Trading Program adjusted budget for the 2014 allocation year by the following formula:

$$\text{AB} = \text{BB} - \text{FCPIABA}$$

Where:

AB is the Rhode Island CO₂ Budget Trading Program 2014 adjusted budget.

BB is the NAME Rhode Island CO₂ Budget Trading Program 2014 base budget.

FCPIABA is the first control period interim adjustment for banked allowances quantity.

- (f) CO₂ Budget Trading Program adjusted budgets for 2015 through 2020. On April 15, 2014 the Department shall determine the Rhode Island CO₂ Budget Trading Program adjusted budgets for the 2015 through 2020 allocation years by the following formula:

$$\text{AB} = \text{BB} - (\text{FCPIABA} + \text{SCPIABA})$$

Where:

AB is the Rhode Island CO₂ Budget Trading Program adjusted budget.

BB is the Rhode Island CO₂ Budget Trading Program base budget.

FCPIABA is the first control period interim adjustment for banked allowances.

SCPIABA is the second control interim adjustment for banked allowances.

(g) After making the determinations in XX-5.3 (g) and (h), the Department or its Agent will publish the CO₂ trading program adjusted base-budgets for the 2014 through 2020 allocation years.

~~(b) Early reduction CO₂ allowances. The Department may award early reduction CO₂ allowances (ERAs) to a CO₂ budget source for reductions in the CO₂ budget source's CO₂ emissions (inclusive of all emissions from CO₂ budget units at the CO₂ budget source) that are achieved by the source during the early reduction period (2006, 2007, and 2008), subject to the requirements of this subsection. Total facility shutdowns shall not be eligible for ERAs.~~

~~(1) The CO₂ budget source must submit its application for the award of ERAs by May 1, 2009.~~

~~(2) The CO₂ budget source must demonstrate that all CO₂ budget units that existed at the source during the baseline period (2003, 2004, and 2005) are included as CO₂ budget units for the early reduction period. New CO₂ budget units added at the CO₂ budget source must also be accounted for during the early reduction period.~~

~~(3) The Department will calculate the number of ERAs to be awarded to a particular CO₂ budget source for the early reduction period pursuant to the following methodology:~~

~~a. If total heat input to all CO₂ budget units at the CO₂ Budget source during the early reduction period is less than or equal to the total heat input to all the CO₂ budget units at the CO₂ budget source during the baseline period, then:~~

~~(i) ERAs shall be calculated as follows:~~

$$\text{ERAs} = ((\text{AEEER}_{\text{BASELINE}} - \text{AEEER}_{\text{ERP}}) \times (\text{EO}_{\text{ERP}} + (\text{TO}_{\text{ERP}} / 3.413))) / 2000$$

~~where:~~

~~“AEEER_{BASELINE}” is the average CO₂ emissions rate resulting from electric energy output and thermal energy output for all of the CO₂ budget units at the CO₂ budget source during the baseline period (in pounds of CO₂/MWh_{th+e});~~

~~“ A_{ERP} ” is the average CO_2 emissions rate resulting from electric energy output and thermal energy output for all of the CO_2 budget units at the CO_2 budget source during the early reduction period (in pounds of CO_2/MWh_{th+e});~~

~~“ E_{ERP} ” is the total electric energy output from all CO_2 budget units at the CO_2 budget source during the early reduction period (in MWh_e);~~

~~“ T_{ERP} ” is the total useful thermal energy output from all CO_2 budget units at the CO_2 budget source during the early reduction period (in MMBtu);~~

~~(ii) For the purposes of this section, thermal energy output will be converted to units of MWh by the conversion factor $1 MWh = 3.413 MMBtu$.~~

~~(iii) For the purposes of this section, output shall be monitored in accordance with sections 46.9 and 46.10.~~

~~b. If total heat input to all CO_2 budget units at the CO_2 budget source during the early reduction period is greater than or equal to the total heat input to all the CO_2 budget units at the CO_2 budget source during the baseline period, then:~~

$$\text{ERAs} = E_{\text{BASELINE}} - E_{\text{ERP}}$$

~~where:~~

~~“ E_{BASELINE} ” are total CO_2 emissions from all of the CO_2 budget units at the CO_2 budget source during the baseline period (in tons); and~~

~~“ E_{ERP} ” are total CO_2 emissions from all of the CO_2 budget units at the CO_2 budget source during the early reduction period (in tons).~~

~~(4) The CO_2 budget source must demonstrate that the data submitted in support of the early reduction application was recorded in compliance with the requirements of sections 46.9 and 46.10 for all of the baseline years and the early reduction years for which the CO_2 budget source was required to report CO_2 data pursuant to 40 CFR part 75. A CO_2 budget source that was not required to submit CO_2 data pursuant to 40 CFR part 75 for any of the years contained in the baseline period or early reduction period may petition the Department as part~~

~~of its application under this subsection for the use of an alternative data source or sources for the calculation of early reduction allowances.~~

~~(5) — Once the Department confirms a CO₂ budget source's early reductions of CO₂ emissions, it will award the ERAs to the CO₂ budget source's compliance account by December 31, 2009.~~

(eh) Voluntary renewable energy market set-aside allocation.

- (1) The Department shall open and manage a general account for the voluntary renewable energy market set-aside for each allocation year.
- (2) The Department shall allocate 1% of the number of allowances of the annual base budget to the voluntary renewable energy market set-aside account.
- (3) The Department shall permanently retire CO₂ allowances from the voluntary renewable energy market set-aside account for a given allocation year. The number of allowances to be retired shall be made based on the following:
 - a. Any person may submit data to the Department or the Department may gather data documenting purchases of voluntary renewable energy that meet the requirements of this subsection by no later than the March 1 immediately following the allocation year for which it is being made and must include information to assure that the voluntary renewable energy purchase demonstrates accreditable CO₂ emissions reductions. Such data must be from reputable sources, which may include retail electricity providers, organizations that certify renewable energy products, and other parties as determined by the Department. To be considered, data must be verifiable and document the following for voluntary renewable energy purchases:
 - (i) Documentation of voluntary renewable energy or renewable energy attribute credit purchases by retail customers, by customer class, in the State during the allocation year immediately preceding the application date.
 - (ii) Documentation that the renewable energy or renewable energy attributes related to voluntary renewable energy or renewable energy attribute credit sales was procured

by the retail provider.

- (iii) Time period when the retail purchase(s) was made.
- (iv) State where the electricity was generated or the renewable energy attribute credit was created, including documentation of facility name, unique generator identification number, and fuel type.
- (v) Time period when the electricity was generated or the renewable energy attribute credit was created.

- b. By October 31st following the March 1st application deadline established in subsection 46.4.3(c), the Department will determine the actual MWh of voluntary renewable energy market purchases that occurred during the allocation year. The department will retire CO₂ allowances from the voluntary renewable set-aside account in the amount up to the number of CO₂ tons represented by actual voluntary renewable energy market purchases, based on actual MWh purchases demonstrated by each applicant as follows:

$$\text{CO}_2 \text{ tons} = \text{MP} \times \text{EF}$$

where:

CO₂ tons, rounded down to the nearest whole ton, is the number of allowances to be retired from the set-aside account.

MP is the MWh of voluntary renewable energy purchases in the State during the allocation year.

EF is the CO₂ emissions factor for the control area where the electricity represented by the sale was generated.

In no event shall the department retire more than 1% of the base budget for the allocation year.

- (4) After retiring the CO₂ allowances from the voluntary renewable energy market set-aside account, the Department ~~will~~may transfer any remaining CO₂ allowances from the set-aside account to the Rhode Island Auction/Sale Account.

46.5 CO₂ Authorized Account Representative for CO₂ Budget Sources

46.5.1 Authorization and responsibilities of the CO₂ authorized account representative.

- (a) Except as provided under subsection 46.5.2, 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 Department or its agent of a complete account certificate of representation under subsection 46.5.5, 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 Department 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 Department or its agent has received a complete account certificate of representation under subsection 46.5.5 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 Department 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 46.5.1(e) of this subsection.

46.5.2 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 Department or its agent of a complete account certificate of representation under subsection 46.5.5, 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 46.5.1(a), subsections 46.5.3, 46.5.4, 46.5.5, and 46.8.2, whenever the term “CO₂ authorized account representative” is used in this regulation, the term shall be construed to include the alternate CO₂ authorized account representative.

46.5.3 Changing the CO₂ authorized account representative and the alternate CO₂ authorized account representative.

- (a) Changing the CO₂ authorized account representative. The CO₂ authorized account representative may be changed at any time upon receipt by the Department or its agent of a superseding complete account certificate of representation under subsection 46.5.5. 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 Department 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 Department or its agent of a superseding complete account certificate of representation under subsection 46.5.5. 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 Department 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.

46.5.4 Changes in the owners and operators.

- (a) 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 Department, as if the new owner or operator were included in such list.
- (b) 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.

46.5.5 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 Department 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 (if any) 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.

~~(a)(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 Department or a court regarding the source or unit.”

(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 Department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or its agent. Neither the Department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

46.5.6 Objections concerning the CO₂ authorized account representative.

- (a) Once a complete account certificate of representation under subsection 46.5.5 has been submitted and received, the Department and its agent will rely on the account certificate of representation unless and until the Department or its agent receives a superseding complete account certificate of representation under subsection 46.5.5.
- (b) Except as provided in 46.5.3(a) or (b), no objection or other communication submitted to the Department 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 Department or its agent under the CO₂ Budget Trading Program.
- (c) The Department will not adjudicate the interest of private parties including but not limited to those 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.

46.5.7 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 Department or its agent under this regulation.
- (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 Department or its agent under this regulation.
- (c) In order to delegate authority to make an electronic submission to the Department or its agent in accordance with 46.5.7(a) and 46.5.7(b) of this subsection, the CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, shall submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following elements:
 - (1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) 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 (if any) 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 46.5.7(a) and 46.5.7(b) of this subsection for which authority is delegated to him or her.
 - (4) The following certification statements by such CO₂ authorized account representative or alternate CO₂ authorized account representative:
 - a. *“I agree that any electronic submission to the Department 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 46.5.7(d) shall be deemed to be an electronic submission by me.”*
 - b. *“Until this notice of delegation is superseded by another notice of delegation under 46.5.7(d), I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under subsection 46.5.7 is terminated.”*

- (d) A notice of delegation submitted under 46.5.7(c) of this subsection 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 Department or its agent and until receipt by the Department 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 46.5.7(c)(4)a. of this subsection and made in accordance with a notice of delegation effective under 46.5.7(d) of this subsection 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.

46.6 Permits

46.6.1 Permit requirements.

- (a) Each CO₂ budget permit source and each CO₂ budget unit must have a CO₂ budget permit issued under the requirements of this regulation and shall:
 - (1) Submit to the Department a complete CO₂ budget permit application under subsection 46.6.3 in accordance with the deadline specified in subsection 46.6.2; and
 - (2) Submit in a timely manner any supplemental information that the Department determines is necessary in order to review a CO₂ budget permit application and issue or deny a CO₂ budget permit.
- (b) The owners and operators of each CO₂ budget source and each CO₂ budget unit shall operate the CO₂ budget source and CO₂ budget unit in compliance with the requirements of such CO₂ budget permit.
- (c) Each CO₂ budget permit is deemed to incorporate automatically the definitions of terms under section 46.1.

46.6.2 Submission of CO₂ budget permit applications.

- (a) The CO₂ authorized account representative of any CO₂ budget source shall submit to the Department a complete CO₂ budget permit application under subsection 46.6.3 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.

46.6.3 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 Department:
 - (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; and
 - (2) Identification of each CO₂ budget unit at the CO₂ budget source,
 - (3) An output monitoring plan that meets the requirements in section 46.10, and
 - (4) Any other information requested by the Department.

46.6.4 CO₂ budget permit revisions.

- (a) If the CO₂ budget source is required to have a title V operating permit under Air Pollution Control Regulation No. 29 – Operating Permits, the CO₂ budget portion of the title V operating permit shall be modified in accordance with the procedures in the regulation.
- (b) If the CO₂ budget source is not required to have a title V operating permit under Air Pollution Control Regulation No. 29 – Operating Permits, the CO₂ budget permit shall be modified in accordance with the procedures in the regulation.

46.6.5 Duty to reapply.

- (a) For a CO₂ budget source required to have a title V operating permit, the CO₂ authorized account representative shall submit a complete CO₂ budget permit application under subsection 46.6.3 for the CO₂ budget source covering the CO₂ budget units at the source in accordance with the provisions of Air Pollution Control Regulation No. 29 addressing permit renewals.
- (b) For a CO₂ budget source not required to have a title V operating permit, the CO₂ authorized account representative shall submit a complete CO₂ budget permit application under subsection 46.6.3 for the CO₂ budget source covering the CO₂ budget units at the source in accordance with the provisions of Air Pollution Control Regulation No. 29 addressing permit renewals.

46.7 CO₂ Allowance Transfers

46.7.1 Submission of CO₂ allowance transfers.

- (a) The CO₂ authorized account representatives seeking recordation of a CO₂ allowance transfer shall submit the transfer to the Department or its agent. To be considered correctly submitted, the CO₂ allowance transfer shall include the following elements in a format specified by the Department or its agent:
 - (1) The numbers identifying both the transferor and transferee accounts;
 - (2) A specification by serial number of each CO₂ allowance to be transferred;
 - (3) The printed name and signature of the CO₂ authorized account representative of the transferor account and the date signed;
 - (4) The date of the completion of the last sale or purchase transaction for the allowance, if any; and
 - (5) The purchase or sale price of the allowance that is the subject of a sale or purchase transaction under 46.7.1(a)(4) of this subsection.

46.7.2 Recordation.

- (a) Within 5 business days of receiving a CO₂ allowance transfer, except as provided in 46.7.2(b) of this subsection, the Department 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 subsection 46.7.1;
 - (2) The transferor account includes each CO₂ allowance identified by serial number in the transfer; and
 - (3) The transfer meets all other requirements of this regulation.
- (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 or interim control period prior to or the same as the control period or interim control period to which the CO₂ allowance transfer deadline applies will not be recorded until after completion of the process pursuant to subsection 46.8.5(b).

- (c) Where a CO₂ allowance transfer submitted for recordation fails to meet the requirements of 46.7.2(a) of this subsection, the Department or its agent will not record such transfer.

46.7.3 Notification.

- (a) Notification of recordation. Within 5 business days of recordation of a CO₂ allowance transfer under subsection 46.7.2, the Department 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 46.7.2(a), the Department 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. All submissions of CO₂ allowances following notification of non-recordation are subject to the provisions of section 46.7.

46.8 CO₂ Allowance Tracking System

46.8.1 CO₂ Allowance Tracking System accounts.

- (a) Nature and function of compliance accounts. Consistent with subsection 46.8.2(a), the Department or its agent will establish one compliance account for each CO₂ budget source. Deductions or transfers of CO₂ allowances pursuant to 46.7, 46.8.5, 46.8.7, or 46.11.2 will be recorded in the compliance accounts in accordance with this section.
- (b) Nature and function of general accounts. Consistent with subsection 46.8.2(b), the Department or its agent will establish, upon request, a general account for any person. Transfers of CO₂ allowances pursuant to section 46.7 will be recorded in the general account in accordance with this section.

46.8.2 Establishment of accounts.

- (a) Compliance accounts. Upon receipt of a complete account certificate of representation under subsection 46.5.5, the Department 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 Department or its agent and shall include the following elements in a format prescribed by the Department or its agent:

- a. Name, mailing address, e-mail address, telephone number, and facsimile transmission number (if any) of the CO₂ authorized account representative and any alternate CO₂ authorized account representative;
- b. At the option of the CO₂ authorized account representative, organization name and type of organization;
- c. 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;
- d. 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 Department or its agent or a court regarding the general account.”;

- e. The signature of the CO₂ authorized account representative and any alternate CO₂ authorized account representative and the dates signed; and
- f. Unless otherwise required by the Department or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the Department or its agent. Neither the Department 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.

- a. Upon receipt by the Department or its agent of a complete application for a general account under 46.8.2(b)(1) of this subsection:
 - (i) The Department or its agent will establish a general account for the person or persons for whom the application is submitted.
 - (ii) 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 Department or its agent or a court regarding the general account.
 - (iii) 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.

- b. 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.”

- c. The Department 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 46.8.2(b)(2)b. of this subsection.

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

- a. The CO₂ authorized account representative for a general account may be changed at any time upon receipt by the Department or its agent of a superseding complete application for a general account under 46.8.2(b)(1) of this subsection. 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 Department 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.
- b. The alternate CO₂ authorized account representative for a general account may be changed at any time upon receipt by

the Department or its agent of a superseding complete application for a general account under 46.8.2(b)(1) of this subsection. 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 Department 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.

- c. 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 Department or its agent, as if the new person were included in such list.
- d. 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 or deletion 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.

- a. Once a complete application for a general account under 46.8.2(b)(1) of this subsection has been submitted and received, the Department or its agent will rely on the application unless and until a superseding complete application for a general account under 46.8.2(b)(1) of this subsection is received by the Department or its agent.
- b. Except as provided in 46.8.2(b)(3)a. and 46.8.2(b)(3)b. of this subsection, no objection or other communication submitted to the Department 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 Department or its agent under the CO₂ Budget Trading Program.

- c. Neither the Department 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.

- 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 Department or its agent provided for under sections 46.7 and 46.8.
- b. An alternate CO₂ authorized account representative may delegate, to one or more natural person, his or her authority to make an electronic submission to the Department or its agent provided for under sections 46.7 and 46.8.
- c. In order to delegate authority to make an electronic submission to the Department or its agent in accordance with 46.8.2(b)(5)a. and 46.8.2(b)(5)b. of this subsection, the CO₂ authorized account representative or alternate CO₂ authorized account representative, as appropriate, must submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following elements:
 - (i) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CO₂ authorized account representative or alternate CO₂ authorized account representative;
 - (ii) The name, address, e-mail address, telephone number and facsimile transmission number (if any) of each

such natural person, herein referred to as “electronic submission agent”;

(iii) For each such natural person, a list of the type of electronic submissions under 46.8.2(a) or 46.8.2(b) of this section for which authority is delegated to him or her; and

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

(A) *“I agree that any electronic submission to the Department 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 46.8.2(b)(5)d. shall be deemed to be an electronic submission by me.”*

(B) *“Until this notice of delegation is superseded by another notice of delegation under 46.8.2(b)(5)d., I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under 46.8.2(b)(5) is terminated.”*

d. A notice of delegation submitted under 46.8.2(b)(5)c. of this subsection 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 Department or its agent and until receipt by the Department 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 46.8.2(b)(5)c.(iv)(A) of this subsection and made in accordance with a notice of delegation effective under 46.8.2(b)(5)d. of this subsection 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 Department or its agent will assign a unique identifying number to each account established under subsections 46.8.2(a) or (b) of this section.

46.8.3 CO₂ Allowance Tracking System responsibilities of CO₂ authorized account representative.

Following the establishment of a CO₂ Allowance Tracking System account, all submissions to the Department 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.

46.8.4 Recordation of CO₂ allowance allocations.

- (a) By January 1, 2009, the Department or its agent will record in the Rhode Island Auction/Sale Account the CO₂ allowances for allocation years of 2009, 2010, 2011, and 2012.
- (b) By January 1, 2010 and each January thereafter, the Department or its agent will record in the Rhode Island Auction/ Sale Account the CO₂ allowances for the allocation year three years in the future.
- (c) By January 1, 2009, the Department or its agent will record in the Voluntary Renewable Energy Market Set-aside Account the CO₂ allowances for allocation years of 2009, 2010, 2011, and 2012.
- (d) By January 1, 2010 and each January thereafter, the Department or its agent will record in the Voluntary Renewable Energy Market Set-aside Account the CO₂ allowances for the allocation year three years in the future.
- (e) Serial numbers for allocated CO₂ allowances. When allocating CO₂ allowances to and recording them in an account, the Department 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.

~~(e) On or before December 31, 2009, the Department shall record any ERAs awarded pursuant to 46.4.3(b)(5) in the CO₂ budget source's compliance account.~~

46.8.5 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 subsection 46.3.1 for a control period or an interim control period.
- (1) The CO₂ allowances, other than CO₂ offset allowances, are of allocation years that fall within a prior control period, the same control period, or the same interim 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 interim control period are transferred into the compliance account by a CO₂ allowance transfer correctly submitted for recordation under subsection 46.7.1 by the CO₂ allowance transfer deadline for that control period or interim 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 subsection 46.3.1 for a control period or interim control period may not exceed 3.3 percent the number of tons representing the following percentages of the CO₂ budget source's CO₂ emissions for that control period, or of 0.50 times the CO₂ budget source's CO₂ emissions for an interim control period, as determined in accordance with sections 46.8, 46.9 and 46.10:
 - ~~a. Unless the provisions of 46.8.5(a)(3)b. or 46.8.5(a)(3)c. apply, 3.3 percent;~~
 - ~~b. If the Department determines that there has been a stage one trigger event, 5 percent; or~~
 - ~~c. If the Department 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 46.8.5(d) of this section.
- (b) Deductions for compliance.
- (1) Following the recordation, in accordance with subsection 46.7.2, 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, or interim control period, the Department or its agent will deduct CO₂ allowances available under 46.8.5(a) of this subsection to cover the source's CO₂ emissions (as determined in accordance with sections 46.9 and 46.10) for the control period, or interim control period as follows:

- a. Until the amount of CO₂ allowances deducted equals the number of tons of total CO₂ emissions, emissions (or 0.50 times the number of tons of total CO₂ emissions for an interim control period), less any CO₂ emissions attributable to the burning of eligible biomass, determined in accordance with sections 46.9 and 46.10, from all CO₂ budget units at the CO₂ budget source for the control period or interim control period; or
 - b. If there are insufficient CO₂ allowances to complete the deductions in 46.8.5(b)(1) of this subsection, until no more CO₂ allowances available under 46.8.5(b)(1)a. of this subsection 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 or interim control period in accordance with 46.8.5(b), or 46.8.5(d) of this subsection. Such identification shall be made in the compliance certification report submitted in accordance with subsection 46.11.1.
 - (2) The Department or its agent will deduct CO₂ allowances for a control period or interim 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 46.8.5(c)(1) of this subsection, in the following order:
 - a. First, subject relevant compliance deduction limitations under 46.8.5(a)(3) and 46.8.5(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.

- b. Second, any CO₂ allowances, other than CO₂ offset allowances that are available for deduction under 46.8.5 (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 46.8.5(b) of this subsection, the Department 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 sufficient allowances 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 46.8.5(d)(1) of this subsection 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.

- a. 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. The Department or its agent will have complete discretion to determine if the owner or operator of the unit demonstrated that a lesser number of days should be used.

- b. Each ton of excess emissions is a separate violation.

c. For purposes of determining the number of days of violation, if a CO₂ budget source has excess interim emissions for an interim control period, each day in the interim 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

d. Each ton of excess interim emissions is a separate violation.

(3) The propriety of the Department's determination that a CO₂ budget source had excess emissions and the associated deduction of CO₂ allowances from that CO₂ budget source's account may be later challenged in the context of an 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 Department or its agent from initially deducting the CO₂ allowances resulting from the Department's original determination that the relevant CO₂ budget source has had excess emissions. Should the Department'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 Department shall:

a. In any instance where the Department's determination of the extent of excess emissions was too low, the Department will take further action under 46.8.5(d)(1) and 46.8.5(d)(2) of this section to address the expanded violation.

b. In any instance where the Department's determination of the extent of excess emissions was too high, the Department 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.

(e) The Department will record in the appropriate compliance account all deductions from such an account pursuant to 46.8.5(b) and 46.8.5(d) of this subsection.

(f) Action by the Department on submissions.

- (1) The Department 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 Department may deduct CO₂ allowances from or transfer CO₂ allowances to a source's compliance account based on information in the submissions, as adjusted under 46.8.5(f)(1) of this subsection.

46.8.6 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 subsection 46.7, subsection 46.8.5, subsection 46.8.7, or section 46.11.2.

46.8.7 Account error.

The Department 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 ten (10) business days of making such correction, the Department or its agent will notify the CO₂ authorized account representative for the account.

46.8.8 Closing of general accounts.

- (a) A CO₂ authorized account representative of a general account may instruct the Department 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 subsection 46.7.1 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 Department 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 twenty (20) business days after the notice is sent. The account will be closed after the twenty (20)-day period unless before the end of the twenty (20)-day period the Department or its agent receives a correctly submitted transfer of CO₂ allowances into the account under subsection 46.7.1 or a statement submitted by the CO₂ authorized account representative demonstrating to the satisfaction of the Department or its agent good cause as to why the account should not be closed. The Department or its agent will have sole discretion to

determine if the owner or operator of the unit demonstrated that the account should not be closed.

46.9 Monitoring

46.9.1 Monitoring requirements.

- (a) The owners and operators, and to the extent applicable, the CO₂ authorized account representative of a CO₂ budget unit, shall comply with the monitoring requirements as provided in this subsection and all applicable sections of 40 CFR part 75. Where referenced in 46.9 and 46.10, 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 regulation. For purposes of complying with such requirements, the definitions in section 46.1. 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 subsection 46.1. For units not subject to an Acid Rain emissions limitation, the term “Administrator” in 40 CFR Part 75 shall be replaced with “the Department or its agent”. Owners or operators of a CO₂ budget unit who monitor a unit that is not a 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 regulation shall monitor and report CO₂ mass emissions from such unit that is not a CO₂ budget unit according to the procedures for CO₂ budget units established in this section and 46.10.
- (b) The emissions measurements recorded and reported in accordance with this section shall be used to determine compliance by the unit with the CO₂ requirements of subsection 46.3.1

46.9.2 General requirements.

- (a) Requirements for installation, certification, and data accounting. The owner or operator of each CO₂ budget unit shall meet the following requirements.
 - (1) Install all monitoring systems necessary to monitor CO₂ mass emissions in accordance with 40 CFR Part 75, except for equation G-1. Equation G-1 in Appendix G shall not be used to determine CO₂

emissions under this section. This may require systems to monitor CO₂ concentration, stack gas flow rate, O₂ concentration, heat input, and fuel flow rate.

- (2) Successfully complete all certification tests required under subsection 46.9.3 and meet all other requirements of this section and 40 CFR part 75 applicable to the monitoring systems under 46.9.2(a)(1) of this subsection.
 - (3) Record, report and quality-assure the data from the monitoring systems under 46.9.2(a)(1) of this subsection.
- (b) Compliance dates. The owner or operator of a CO₂ budget unit shall meet the monitoring system certification and other requirements of 46.9.2(a)(1) through 46.9.2(a)(3) of this section on or before the following dates. The owner or operator of a CO₂ budget unit shall record, report and quality-assure the data from the monitoring systems under 46.9.2(a)(1) of this subsection on and after the following dates:
- (1) The owner or operator of a CO₂ budget unit, except for a CO₂ budget unit under 46.9.2(b)(2) of this section, that commences commercial operation before July 1, 2008, must comply with the requirements of this section 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 section by the later of the following dates:
 - a. January 1, 2009; or
 - b. the earlier of:
 - (i) 90 unit operating days after the date on which the unit commences commercial operation; or
 - (ii) 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 46.9.2(b)(1) or 46.9.2(b)(2) of this subsection by the earlier of:
 - a. 90 unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue; or

b. 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 46.9.2(c)(2) of this subsection, the owner or operator of a CO₂ budget unit that does not meet the applicable compliance date set forth in 46.9.2(b)(1), 46.9.2(b)(2) and 46.9.2(b)(3) of this subsection for any monitoring system under 46.9.2(a)(1) of this subsection 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 46.9.2(b)(3) of this subsection for any monitoring system under 46.9.2(a)(1) of this subsection 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 46.9.2(b)(3) of this subsection.
- (3) CO₂ budget units subject to an acid rain emissions limitation that qualify for the optional SO₂, NO_x, and CO₂ (for acid rain) emissions calculations for low mass emissions (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 regulation.
- (4) CO₂ budget units subject to an acid rain emissions limitation or that do not qualify for the optional SO₂, NO_x, and CO₂ (for acid rain) 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 regulation.
- (5) 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 subsection 46.10.5
- (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 section 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 section 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 section, except under any one of the following circumstances:
 - a. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section and 40 CFR part 75, by the Department for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or
 - b. The CO₂ authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 46.9.3(d)(3)a.

46.9.3 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 subsection for a monitoring system under 46.9.1(a)~~(4)~~ 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 46.9.3(a)(1) of this subsection.
- (b) The recertification provisions of this subsection shall apply to a monitoring system under 46.9.2(a)(1) exempt from initial certification requirements under 46.9.3(a) of this subsection.
- (c) Notwithstanding subsection 46.9.3(a) 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 Department under 46.10.5(a) to determine whether the approval applies under this program.
- (d) Except as provided in 46.9.3(a) of this subsection, 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 46.9.2(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 46.9.3(e) or 46.9.3(f) of this subsection, respectively.
- (1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system required under 46.9.2(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. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subsection 46.9.2(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this section 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.
 - a. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record CO₂ mass emissions or to meet the 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).
 - b. For systems using stack measurements such as stack flow, stack moisture content, CO₂ or O₂ monitors, 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 Department 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. Subsections 46.9.3(d)(3)a. through d. apply to both initial certification and recertification of a monitoring system under 46.9.2(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 prescribed in 40 CFR 75.20(b)(5) and (g)(7) in lieu of 46.9.3(d)(3)e. of this subsection.
 - a. Notification of certification. The CO₂ authorized account representative shall submit to the Department or its agent, the appropriate EPA Regional Office and the Administrator a written notice of the dates of certification in accordance with subsection 46.9.5.
 - b. Certification application. The CO₂ authorized account representative shall submit to the Department or its agent a certification application for each monitoring system. A

complete certification application shall include the information specified in 40 CFR 75.63.

- c. 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 Department of the complete certification application for the monitoring system or component thereof under 46.9.3(d)(3)b. of this subsection. 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 Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.
- d. Certification application approval process. The Department 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 46.9.3(d)(3)b. of this subsection. In the event the Department 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.
 - (i) 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 Department will issue a written notice of approval of the certification application within 120 days of receipt.
 - (ii) Incomplete application notice. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the CO₂ authorized account representative must 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 Department may issue a notice of disapproval under 46.9.3(d)(3)d.(iii) of this subsection. The 120 day review period shall not begin before receipt of a complete certification application.

- (iii) 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 46.9.3(d)(3)d.(ii) of this subsection is met, then the Department 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 Department 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 46.9.3(d)(3)e. of this subsection for each monitoring system or component thereof, which is disapproved for initial certification.
 - (iv) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with subsection 46.9.4(b).
- e. Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under 46.9.3(d)(3)d.(iii) of this subsection or a notice of disapproval of certification status under 46.9.3(d)(3)d.(iv) of this subsection, then:
- (i) 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):
 - (A) For units monitoring 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

- (B) For units monitoring or 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.
 - (ii) The CO₂ authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with 46.9.3(d)(3)a. and 46.9.3(d)(3)b. of this subsection; and
 - (iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department'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 46.9.2(c)(3). The owner or operator of a unit qualified to use the low mass emissions excepted methodology under 46.9.2(c)(3) shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h) and subsection 46.9.3. 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 representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the Department under Subpart E of 40 CFR part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

46.9.4 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 subsection 46.9.3 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 Department or Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department 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 subsection 46.9.3 for each disapproved monitoring system.

46.9.5 Notifications.

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

46.10 Recordkeeping and Reporting

46.10.1 General requirements.

- (a) 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 46.5.1(e).

~~(aa)~~46.10.2 Monitoring plans.

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

~~(4)~~46.10.3 Certification applications.

- (a) The CO₂ authorized account representative shall submit an application to the Department within 45 days after completing all CO₂ monitoring system initial certification or recertification tests required under subsection 46.9.3 including the information required under 40 CFR 75.63 and 40 CFR 75.53(e) and (f).

46.10.4 Quarterly reports. The CO₂ authorized account representative shall submit quarterly reports, as follows:

- (a) 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 Department, for each calendar quarter beginning with:
 - (1) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or
 - (2) 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 46.9.2(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.
- (b) The CO₂ authorized account representative shall submit each quarterly report to the Department 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.
- (c) Compliance certification. The CO₂ authorized account representative shall submit to the Department 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:

- (1) The monitoring data submitted were recorded in accordance with the applicable requirements of this section, section 46.9 and 40 CFR part 75, including the quality assurance procedures and specifications;
- (2) 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
- (3) The CO₂ concentration values substituted for missing data under Subpart D of 40 CFR part 75 do not systematically underestimate CO₂ emissions.

46.10.5 Petitions.

- (a) Except as provided in 46.10.5(c) of this subsection, 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 Department 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 section and section 46.9 only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.
- (b) Petitions for a CO₂ budget unit that is not 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 Department 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 sections 46.9 and 46.10 only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.
 - (2) In the event that the Administrator declines to review a petition under 46.10.5(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 Department requesting approval to apply an alternative to any requirement in section 46.9 and 46.10. That petition shall contain all the relevant information specified in 40 CFR

75.66. Application of an alternative to any requirement in sections 46.9 and 46.10 is in accordance with sections 46.9 and 46.10 only to the extent that the petition is approved in writing by the Department.

- (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 Department 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 section and 46.10 only to the extent the petition is approved in writing by the Administrator, and subsequently approved in writing by the Department.

46.10.6 CO₂ budget units that co-fire eligible biomass.

- (a) The CO₂ authorized account representative of a CO₂ budget unit that co-fires eligible biomass as a compliance mechanism under this regulation, shall report the following information to the Department or its agent for each calendar quarter:
 - (1) For each shipment of solid eligible biomass fuel fired at the CO₂ budget unit, the total eligible biomass fuel input, on an as-fired basis, in pounds.
 - (2) For each shipment of solid eligible biomass fuel fired at the CO₂ budget unit, the moisture content, on an as-fired basis, as a fraction by weight.
 - (3) For each distinct type of gaseous eligible biomass fuel fired at the CO₂ budget unit, on an as-fired basis, in pounds per standard cubic foot.
 - (4) For each distinct type of gaseous eligible biomass fuel fired at the CO₂ budget unit, the moisture content of the biogas, as a fraction by total weight.
 - (5) For each distinct type of gaseous eligible biomass fuel fired at the CO₂ budget unit, the total eligible biomass fuel input, in standard cubic feet.
 - (6) For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, the dry basis carbon content of the fuel type, as a fraction by dry

weight.

- (7) For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, the dry basis higher heating value, in MMBtu per dry pound.
 - (8) For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, the total dry basis eligible biomass fuel input, in pounds, calculated in accordance with 46.10.6(b).
 - (9) The total amount of CO₂ emitted from the CO₂ budget unit due to firing eligible biomass fuel, in tons, calculated in accordance with 46.10.6(c).
 - (10) For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, the total eligible biomass fuel heat input in MMBtu, calculated in accordance with 46.10.6(d)(1).
 - (11) The total amount of heat input to the CO₂ budget unit due to firing eligible biomass fuel in MMBtu, calculated in accordance with 46.10.6(d)(2).
 - (12) Description and documentation of monitoring technology employed, and description and documentation of fuel sampling methodology employed, including sampling frequency; and
 - (13) For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, chemical analysis, including heating value and carbon content.
- (b) An owner or operator of a CO₂ budget unit shall calculate and submit to the Department or its agent on a quarterly basis the total dry weight for each distinct type of eligible biomass fired by the CO₂ budget unit during the reporting quarter. The total dry weight shall be determined for each fuel type as follows:

- (1) For solid fuel types:

$$F_j = \sum_{i=1}^m (1 - M_i) \times F_i$$

where:

F_j = Total eligible biomass fuel input (lbs) for fuel type j;

F_i = Eligible biomass fuel input (lbs) for fired shipment i;

M_i = Moisture content (fraction) for fired shipment i;

i = fired fuel shipment;

j = fuel type; and,

m = number of shipments.

- (2) For gaseous fuel types:

$$F_j = D_j \times V_j \times (1 - M_j)$$

where:

F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j;

D = Density of biogas (lbs/scf) for fuel type j;

V = Total volume (scf) for fuel type j;

M_j = Moisture content (fraction) for fuel type j,

j = fuel type.

- (c) CO₂ emissions due to firing of eligible biomass shall be determined as follows:

- (1) For any full calendar quarter during which no fuel other than eligible biomass combusted at the CO₂ budget unit, as measured and recorded in accordance with this section and 46.9; or
- (2) For any full calendar quarter during which fuels other than eligible biomass are combusted at the CO₂ budget unit, as determined using the following equation:

$$\text{CO}_2 \text{ tons} = \sum_{j=1}^n F_j \times C_j \times O_j \times 44/12 \times 0.0005$$

where:

CO₂ tons = CO₂ emissions due to firing of eligible biomass for the reporting quarter;

F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated in 46.10.6.(b);

C_j = carbon fraction (dry basis) for fuel type j;

O_j = Oxidation factor for eligible biomass fuel type j, derived for solid fuels based on the ash content of the eligible biomass fired and the carbon content of this ash, as determined pursuant to 46.10.6(a)(12); for gaseous eligible biomass fuels, a default oxidation factor of 0.995 may be used;

44/12 = The number of tons of carbon dioxide that are created when one ton of carbon combusted (44/12);

0.0005 = The number of short tons which is equal to one pound;

j = fuel type; and

n = number of distinct fuel types.

(d) Heat input due to firing of eligible biomass for each quarter shall be determined as follows:

(1) For each distinct fuel type:

$$H_j = F_j \times HHV_j$$

where:

H_j = Heat input (MMBtu) for fuel type j ;

F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j , as calculated in 46.10.6(b);

HHV_j = Higher heating value (MMBtu/lb), dry basis, for fuel type j , as determined through chemical analysis;

j = fuel type.

(2) For all fuel types:

$$\text{Heat Input MMBtu} = \sum_{j=1}^n H_j$$

where:

H_j = Heat input (MMBtu) for fuel type j ;

j = fuel type; and

n = number of distinct fuel types.

(e) Fuel sampling methods and fuel sampling technology shall be consistent with the New York State Renewable Portfolio Standard Biomass Guidebook, ~~May 2006~~ [September 2011](#).

46.10.7 Additional requirements to provide output data.

- (a) A CO₂ budget source shall submit to the Department or its agent a method for quantification of net electrical output.
- (b) 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 unit that is not a CO₂ budget unit prior to measurement by the billing meter shall propose to the Department 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.
- (c) **Monitoring.** The owner or operator of each CO₂ budget unit 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:
 - a. If the CO₂ budget unit monitors net electric output, the diagram should contain all CO₂ budget unit and all generators served by each CO₂ budget units and generators. If a generator served by a CO₂ budget unit is also served by a unit that is not a CO₂ budget unit, the unit that is not a CO₂ budget 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.
 - b. 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 units that are not CO₂ budget 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 energy 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 46.10.7(e).

- (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.
- (d) 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 in paragraph 46.10.7(d)(2) of this subsection. This statement may be submitted with the certification application required under subsection 46.10.3.
 - (1) Billing meters. The billing meter shall 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 shall 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.
 - a. 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.
 - b. 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.
- (e) Ongoing QA/QC. The following 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 such pressure and temperature transmitters, and 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 46.10.7(c).
- (f) 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 46.3.3 and 46.5.1(e).
 - (2) Recordkeeping. The owner or operator of a CO₂ budget unit shall retain data used to monitor, determine, or calculate net generation for ten years from the date reported.
 - (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 Department or its agent. The annual report shall include the annual total unit level MWh, the annual total useful thermal energy 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.”

46.11 Compliance Certification

41.11.1 Compliance certification report.

- (a) Applicability and deadline. For each control period in which a CO₂ budget source is subject to the CO₂ requirements of subsection 46.3.1, the CO₂ authorized account representative of the source shall submit to the Department by the March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.
- (b) Contents of report. The CO₂ authorized account representative shall include in the compliance certification report under 46.11.1(a) of this subsection the following elements, in a format prescribed by the Department concerning each unit at the source and subject to the CO₂ budget emissions limitation for the control period covered by the report:
 - (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 subsection 46.8.5 for the control period, including the serial numbers of any CO₂ offset allowances that are to be deducted subject to the limitations of 46.8.5(a)(3); and
 - (3) The compliance certification under 46.11.1(c) of this subsection.
- (c) Compliance certification. In the compliance certification report under 46.11.1(a) of this subsection, 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 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, applicable to the unit, including:

- (1) Whether the source was operated in compliance with the CO₂ requirements of 46.3.1;
- (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 sections 46.9 and 46.10;
- (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 sections 46.9 and 46.10. 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 section 46.9 and 46.10 of each monitor at each unit at the source, or for using an accepted monitoring method or alternative monitoring method approved under sections 46.9 and 46.10, if any, have changed; and
- (5) If a change is required to be reported under 46.11.1(c)(4) of this subsection, 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.

46.11.2 Department's action on compliance certifications.

- (a) The Department 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 Department 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 46.11.2(a) of this subsection.

46.12 Reserved

46.13 CO₂ Emissions Offset Projects

46.13.1 Applicability.

This section applies to the sponsor of any CO₂ emissions offset project undertaken to create CO₂ offset allowances for sale or use in the State of Rhode Island in accordance with the requirements of this regulation or in any other participating state.

46.13.2 General requirements for CO₂ emissions offset projects.

- (a) Eligible CO₂ emissions offset projects. To qualify for the award of CO₂ offset allowances, offset projects shall satisfy all the applicable requirements of this section.
 - (1) Offset project types. The following types of offset projects are eligible for the award of CO₂ offset allowances.
 - a. Landfill methane capture and destruction;
 - b. Reduction in emissions of sulfur hexafluoride (SF₆);
 - c. Sequestration of carbon due to reforestation, improved forest management, or avoided conversion/afforestation;
 - d. Reduction or avoidance of CO₂ emissions from natural gas, oil, or propane end-use combustion due to end-use energy efficiency; and
 - e. Avoided methane emissions from agricultural manure management operations.
 - (2) Offset project locations.
 - a. To qualify for the award of CO₂ allowances under section 46.13, eligible offset projects may be located in any of the following locations:

- (i) In Rhode Island; and
- (ii) 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 section 46.13.

b. Projects located (in whole or in part) in one or more participating states are not eligible for CO₂ offset allowances under section 46.13 unless more of the CO₂ equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in Rhode Island than in any other participating state.

~~(b) Eligible CO₂ emissions credit retirements. To qualify for the award of CO₂ offset allowances, a CO₂ emissions credit retirement shall satisfy all the applicable requirements of section 46.13.~~

~~(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 the filing of the consistency application under 46.13.3 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 Department may award CO₂ offset allowances for CO₂ emissions credit retirements only after the occurrence of a stage two trigger event.~~

~~(eb)~~ 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 subsection 46.13.3.

~~(dc)~~ General additionality requirements. Except as provided with respect to specific offset project standards in subsection 46.13.4, the following general

requirements shall apply to each offset project:

- (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 subsection 46.13.3 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 to the Department or its agent legal rights to any and all attribute credits (other than the CO₂ offset allowances that would be awarded under subsection 46.13.6) generated from the operation of the offset project that may be used for compliance with a renewable portfolio standard or other regulatory requirement.
- (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 auction/sale of CO₂ allowances.
- (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 except for as described in 46.13.4.

46(d) Maximum allocation periods for CO₂ emissions offset projects.

- (1) Maximum allocation periods. Except as provided in 46.13.2(~~ed~~)(2) of this section, the Department may award CO₂ offset allowances under subsection 46.13.6 for an initial ten (10) year allocation period. At the end of the initial ten (10) year allocation period the Department may award CO₂ offset allowances for a second ten (10) year allocation period, provided the offset sponsor has submitted a consistency application pursuant to subsection 46.13.3 prior to the expiration of the initial allocation period, and the Department has issued a consistency determination pursuant to 46.13.3(e)(2).
- (2) Maximum ~~afforestation~~-allocation period. The Department may award CO₂ offset allowances under subsection 46.13.6 for any project involving reforestation, improved forest management, or avoided conversion ~~afforestation~~-offset project for an initial twenty five (2025)

year allocation period. At the end of the initial twenty ~~five (2025)~~ year allocation period, ~~or any subsequent crediting period,~~ the Department may award CO₂ offset allowances for a ~~second subsequent~~ twenty ~~five (2025)~~ year allocation period, provided the offset sponsor has submitted a consistency application for the ~~afforestation~~-offset project pursuant to subsection 46.13.3 prior to the expiration of the initial allocation period, and the Department has issued a consistency determination pursuant to 46.13.3(e)(2). ~~At the end of the second twenty (20) year allocation period, the Department may award CO₂ offset allowances for a third twenty (20) year allocation period, provided the offset sponsor has submitted a consistency application for the afforestation offset project pursuant to subsection 46.13.3 prior to the expiration of the second allocation period, and the Department has issued a consistency determination pursuant to 46.13.3(e)(2). In no event may an afforestation offset project be awarded CO₂ offset allowances for more than a total of sixty (60) allocation years.~~

~~(f) Timing of offset projects. The Department may award CO₂ offset allowances under subsection 46.13.6 only for offset projects that are initially commenced on or after December 20, 2005.~~

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

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

46.13.3 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 46.8.2(b). All submissions to the Department required for the award of CO₂ offset allowances under this section 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 time frames.

- (1) For offset projects not involving reforestation, improved forest management, or avoided conversion the consistency application must be submitted by the date that is 6 months after the offset project is commenced~~commenced prior to January 1, 2009, the project sponsor must submit the consistency application on or before June 30, 2009.~~
- (2) For offset projects involving reforestation, improved forest management, or avoided conversion the consistency application must be submitted by the date that is one year after the offset project is ~~except for as described in 46.13.4(c)(9) 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.
 - a. The project’s sponsor’s name, address, e-mail address, telephone number, facsimile transmission number (if any), and account number.
 - b. The offset project description as required by the relevant provisions of subsection 46.13.4.
 - c. A demonstration that the offset project meets all applicable requirements set forth in this section.
 - d. The emissions baseline determination as required by the relevant provisions of subsection 46.13.4.
 - e. 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 as required by the relevant provisions of subsection

46.13.4.

~~(a)~~f. 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 section 46.13. 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 section 46.13 is contingent on meeting the requirements of section 46.13. I authorize the Department 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 Rhode Island.”

- g. 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 Subsection (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;
- h. A verification report and certification statement signed by an independent verifier accredited pursuant to subsection 46.13.5 that expresses that the independent verifier has reviewed the entire application and evaluated the following in relation to the applicable requirements in subsections 46.13.2 and 46.13.4, and any applicable guidance issued by the Department.
 - (i) The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of subsections 46.13.2 and 46.13.4.
 - (ii) The adequacy and validity of information supplied by the project sponsor to demonstrate baseline emissions pursuant to the applicable requirements of subsection 46.13.4.

- (iii) The adequacy of the monitoring and verification plan submitted pursuant to the applicable requirements of subsection 46.13.4.
- (iv) Such other evaluations and statements as may be required by the Department.
- i. 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;
- j. 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; and
- k. Any other information the department or the department's designee may require in order to evaluate the proposed offset project.

~~(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 46.13.2(b), was lawfully held by the project sponsor, and has been permanently and irrevocably retired.~~

(32) Consistency applications shall be submitted in a format approved by the Department.

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

~~(1) Consistency applications may not be submitted to the Department 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 Rhode Island than in any other participating state.~~

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

- (e) Department action on consistency applications.
 - (1) Completeness determination. Within sixty (60) days following receipt of the consistency application filed pursuant to 46.13.3(b) of this subsection, the Department 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 Department to be complete for the purpose of commencing review of the consistency application. In no event shall a completeness determination prevent the Department from requesting additional information in order to enable the Department to make a consistency determination under 46.13.3(e)(2) of this subsection.
 - (2) Consistency determination. Within one hundred and twenty (120) days of making the completeness determination under 46.13.3(e)(1) of this subsection, the Department will issue a determination as to whether the offset project is consistent with the requirements of subsections 46.13.2 and 46.13.3 and the requirements of the applicable offset project standard of subsection 46.13.4. For any offset project found to lack consistency with these requirements, the Department will inform the project sponsor of the offset project's deficiencies.

46.13.4 CO₂ emissions offset project standards.

- (a) Landfill methane capture and destruction. To qualify for the award of CO₂ offset allowances under 46.13, offset projects that capture and destroy methane from landfills shall meet the requirements of subsection 46.13.4(a) and all other applicable requirements of section 46.13.
 - (1) Eligibility. Eligible offset projects shall occur at landfills that are not subject to Section 111 of the Federal Clean Air Act that addresses New Source Performance Standards (NSPS) for municipal solid waste landfills, 40 CFR Part 60, Subpart Cc and Subpart WWW.
 - (2) Offset project description. The offset project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of 46.13.4(a)(1) of this subsection. The project narrative shall include the following information.
 - a. The owner and operator of the offset project;

- b. The location and specifications of the landfill where the offset project will occur, including waste in place;
 - c. The owner and operator of the landfill where the offset project will occur; and
 - d. Specifications of the equipment to be installed and a technical schematic of the offset project.
- (3) Emissions baseline determination. The emissions baseline shall represent the potential fugitive landfill emissions of methane (in tons of CO₂e), as represented by the methane collected and metered for thermal destruction as part of the offset project, and calculated in accordance with this paragraph.

$$\text{Emissions (tons CO}_2\text{e)} = (V \times M \times (1 - \text{OX}) \times \text{GWP}) / 2000$$

where:

V = Volume of methane collected (ft³)

M = Mass of methane per cubic foot (0.04246 lbs/ft³ default value at 1 atmosphere and 20° C)

OX = Oxidation factor (0.10), representing estimated portion of collected methane that would have eventually oxidized to CO₂ if not collected

GWP = CO₂e global warming potential of methane (~~23~~25)

- (4) Calculating emissions reductions. Emissions reductions shall be determined based on potential fugitive methane emissions that would have occurred at the landfill if metered methane collected from the landfill for thermal destruction as part of the offset project was not collected and destroyed. CO₂e emissions reductions shall be calculated as follows:

$$\text{Emissions Reductions (tons CO}_2\text{e)} = (V \times M \times (1 - \text{OX}) \times C_{\text{ef}} \times \text{GWP}) / 2000$$

where:

V = Volume of methane collected (ft₃)

M = Mass of methane per cubic foot (0.04246 lbs/ft³ default value at 1 atmosphere and 20° C)

OX = Oxidation factor (0.10), representing estimated portion of collected methane that would have eventually oxidized to CO₂ if not collected

C_{ef} = Combustion efficiency of methane control technology (0.98)

GWP = CO₂e global warming potential of methane (~~23~~25)

- (5) Monitoring and verification requirements. Offset projects shall employ a landfill gas collection system that provides continuous metering and data computation of landfill gas volumetric flow rate and methane concentration. Annual monitoring and verification reports shall include monthly volumetric flow rate and methane concentration data, including documentation that the methane was actually supplied to the combustion source. Monitoring and verification is also subject to the following requirements.
- a. The project sponsor shall submit a monitoring and verification plan as part of the consistency application that includes a quality assurance and quality control program associated with equipment used to determine landfill gas volumetric flow rate and composition. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated, and calibrated based on manufacturer recommendations, as well as provisions for the retention of maintenance records for audit purposes. The monitoring and verification plan shall be certified by an independent verifier accredited pursuant to subsection 46.13.5.
 - b. The project sponsor shall annually verify landfill gas methane concentration through landfill gas sampling and independent laboratory analysis using applicable U.S. Environmental Protection Agency laboratory test methods.
- (b) Reduction in emissions of sulfur hexafluoride (SF₆). To qualify for the award of CO₂ offset allowances under 46.13, offset projects that prevent emissions of sulfur hexafluoride to the atmosphere from equipment in the electricity transmission and distribution sector, through capture and storage, recycling, or destruction, shall meet the requirements of subsection 46.13.4(b) and all other applicable requirements of section 46.13.

(1) Eligibility.

- a. Eligible offset projects shall consist of incremental actions beyond those taken during the baseline year to achieve a reduction in SF₆ emissions relative to the baseline year. Eligible actions may include an expansion of existing actions. The identified actions to be taken shall be consistent with the guidance provided in [High-voltage switchgear and controlgear - Part 303: Use and handling of sulphur hexafluoride \(SF₆\)](#) [International Electrotechnical Commission \(CEI/IEC\)](#),

~~IEC TR 61634, High voltage switchgear and control gear use and handling of sulfur hexafluoride (SF₆) in high voltage switchgear and control gear, 1st ed., 1995(IEC/TR 62271-303 ed 1.0, and EPRI “SF₆ Management for Substations”, (1020014, 2010).~~

- b. Except as provided in 46.13.3(b)(1)c. of this subsection, eligible offset projects shall have an SF₆ entity-wide emissions rate for the baseline year that is less than the applicable emissions rate in Table 1. The entity-wide SF₆ emissions rate shall be calculated as follows:

$$\text{SF}_6 \text{ Emissions Rate (\%)} = (\text{Total SF}_6 \text{ Emissions for Reporting Year}) / (\text{Total SF}_6 \text{ Nameplate Capacity at End of Reporting Year})$$

where:

SF₆ Nameplate Capacity refers to all SF₆-containing equipment owned and/or operated by the entity, at full and proper SF₆ charge of the equipment rather than the actual charge of the equipment (which may reflect leakage).

Table 1
SF₆ Emissions Rate Performance Standards

A. Emission Regions

<u>Region A</u>	<u>Region B</u>	<u>Region C</u>	<u>Region D</u>	<u>Region E</u>
Connecticut	Alabama	Colorado	Arkansas	Alaska
Delaware	District of Columbia	Illinois	Iowa	Arizona
Maine	Florida	Indiana	Kansas	California
Massachusetts	Georgia	Michigan	Louisiana	Hawaii
New Jersey	Kentucky	Minnesota	Missouri	Idaho
New York	Maryland	Montana	Nebraska	Nevada
New Hampshire	Mississippi	North Dakota	New Mexico	Oregon
Pennsylvania	North Carolina	Ohio	Oklahoma	Washington
Rhode Island	South Carolina	South Dakota	Texas	
Vermont	Tennessee	Utah		
	Virginia	Wisconsin		
	West Virginia	Wyoming		

B. Emissions Rate Performance Standards

<u>Region</u>	<u>Emission Rate^a</u>
Region A	9.68%
Region B	5.22%
Region C	9.68%
Region D	5.77%
Region E	3.65%
U.S. (National)	9.68%

^a Based on weighted average 2004 emissions rates for U.S. EPA SF₆ Partnership utilities in each region. If the weighted average emissions rate in a region is higher than the national weighted average, the default performance standard is the national weighted average emissions rate.

- c. An SF₆ offset project shall be eligible even if the SF₆ entity-wide emissions rate in the baseline year exceeds the applicable rate in 46.13.4(b)(1)b. of this subsection, provided that the project sponsor demonstrates in writing and the Department determines that the project is being implemented at a transmission and/or distribution entity serving a predominantly urban service territory and that at least two of the following factors prevent optimal management of SF₆.
 - (i) The entity is comprised of older than average installed transmission and distribution equipment in relation to the national average age of equipment.
 - (ii) A majority of the entity's electricity load is served by equipment that is located underground, and poor accessibility of such underground equipment precludes management of SF₆ emissions through regular ongoing maintenance.
 - (iii) The inability to take a substantial portion of equipment out of service, as such activity would impair system reliability.
 - (iv) Required equipment purpose or design for a substantial portion of entity transmission and distribution equipment results in inherently leak-prone equipment.
- (2) Offset project description. The offset project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility

requirements of 46.13.4(b)(1) of this subsection. The offset project narrative shall include the following information:

- a. A description of the transmission and/or distribution entity specifying the service territory served by the entity.
 - b. The owner and operator of the transmission and/or distribution entity.
- (3) Emissions baseline determination. If the consistency application is filed after June 30, 2009, baseline SF₆ emissions shall be determined based on annual entity-wide reporting of SF₆ emissions for the calendar year immediately preceding the calendar year in which the consistency application is filed (designated the baseline year). ~~If the consistency application is filed by June 30, 2009, the baseline year may be 2005, but no earlier.~~ The reporting entity shall systematically track and account for all entity-wide uses of SF₆ in order to determine entity-wide emissions of SF₆. The scope of such tracking and accounting shall include all electric transmission and distribution assets and all SF₆-containing and SF₆-handling equipment owned and/or operated by the reporting entity.

- a. Emissions shall be determined based on the following mass balance method:

$$\text{SF}_6 \text{ Emissions (lbs.)} = (\text{SF}_6 \text{ Change in Inventory}) + (\text{SF}_6 \text{ Purchases and Acquisitions}) - (\text{SF}_6 \text{ Sales and Disbursements}) - (\text{Change in Total SF}_6 \text{ Nameplate Capacity of Equipment})$$

where:

Change in Inventory is the difference between the quantity of SF₆ gas in storage at the beginning of the reporting year and the quantity in storage at the end of the reporting year. The term “quantity in storage” includes all SF₆ gas contained in cylinders (such as 115-pound storage cylinders), gas carts, and other storage containers. It does not refer to SF₆ gas held in SF₆-using operating equipment. The change in inventory will be negative if the quantity of SF₆ gas in storage increases over the course of the year.

Purchases and Acquisitions of SF₆ is the sum of all the SF₆ gas acquired from other parties during the reporting year, as contained in storage containers or SF₆-using operating equipment.

Sales and disbursements of SF₆ is the sum of all the SF₆ gas sold or otherwise disbursed to other parties during the reporting year, as contained in storage containers and SF₆-using operating equipment.

Change in Total SF₆ Nameplate Capacity of Equipment is the net change in the total volume of SF₆-containing operating equipment during the reporting year. The net change in nameplate capacity is equal to new equipment nameplate capacity, minus retired equipment nameplate capacity. This quantity will be negative if the retired equipment has a total nameplate capacity larger than the total nameplate capacity of the new equipment. “Total nameplate capacity” refers to the full and proper SF₆ charge of the equipment rather than to the actual charge, which may reflect leakage.

b. Emissions shall be calculated as follows:

$$\text{Emissions (tons CO}_2\text{e)} = [(V_{\text{iby}} - V_{\text{iey}}) + (PA_{\text{psd}} + PA_{\text{e}} + PA_{\text{rre}}) - (SD_{\text{op}} + SD_{\text{rs}} + SD_{\text{df}} + SD_{\text{sor}}) - (CNP_{\text{ne}} - CNP_{\text{rse}})] \times \text{GWP}/2000$$

where (all SF₆ values in lbs.):

V_{iby} = SF₆ inventory in cylinders, gas carts, and other storage containers (not SF₆-containing operating equipment) at the beginning of the reporting year

V_{iey} = SF₆ inventory in cylinders, gas carts, and other storage containers (not SF₆-containing operating equipment) at the end of the reporting year

PA_{psd} = SF₆ purchased from suppliers or distributors in cylinders

PA_e = SF₆ provided by equipment manufacturers with or inside SF₆-containing operating equipment

PA_{rre} = SF₆ returned to the reporting entity after off-site recycling

SD_{op} = Sales of SF₆ to other parties, including gas left in SF₆-containing operating equipment that is sold

SD_{rs} = Returns of SF₆ to supplier (producer or distributor)

SD_{df} = SF₆ sent to destruction facilities

SD_{sor} = SF₆ sent off-site for recycling

CNP_{ne} = Total SF₆ nameplate capacity of new SF₆-containing operating equipment at proper full charge

CNP_{rse} = Total SF₆ nameplate capacity of retired or sold SF₆-containing operating equipment at proper full charge

GWP = CO₂e global warming potential of SF₆ (22,~~200800~~)

c. As part of the consistency application required pursuant to subsections 46.13.3(b) and 46.13.3(c) and in annual monitoring and verification reports required pursuant to subsections 46.13.6(b) and 46.13.6(c), the project sponsor shall provide the documentation required in 46.13.4(b)(5)a. through c. of this subsection to support emissions calculations.

(4) Calculating emissions reductions. Emissions reductions shall represent the annual entity-wide emissions reductions of SF₆ for the reporting entity, relative to emissions in the baseline year. Emissions reductions shall be determined as follows, using the quantification method outlined in 46.13.4(b)(3)b. of this subsection to determine emissions in both the baseline year and reporting year(s):

Emissions Reduction (tons CO₂e) = (Total Pounds of SF₆ Emissions in Baseline Reporting Year) – (Total Pounds of SF₆ Emissions in Reporting Year) x GWP/2000

where:

GWP = CO₂e global warming potential of SF₆ (22,~~200~~800)

(5) Monitoring and verification requirements. The annual monitoring and verification report shall include supporting material detailing the calculations and data used to determine SF₆ emissions reductions and shall also provide the following documentation.

a. The project sponsor shall identify all facilities managed by the entity from which all SF₆ gas is procured and disbursed and maintain an entity-wide log of all SF₆ gas procurements and disbursals. The entity-wide log shall include the weight of each cylinder transported before shipment from the facilities and the weight of each cylinder after return to the facilities. A specific cylinder log shall also be maintained for each cylinder that is used to fill equipment with SF₆ or reclaim SF₆ from equipment. The cylinder log shall be retained with the cylinder and indicate the location and specific identifying information of the equipment being filled, or from which SF₆ is reclaimed, and the weight of the cylinder before and after this activity. The cylinder log shall be returned with the cylinder to the facility when the activity is complete or the cylinder is empty.

- b. A current entity-wide inventory of all SF₆-containing operating equipment and all other SF₆-related items, including cylinders, gas carts, and other storage containers used by the entity. The inventory shall be certified by an independent verifier accredited pursuant to subsection 46.13.5.
- c. The project sponsor shall provide a monitoring and verification plan as part of the consistency application, which shall include an SF₆ inventory management and auditing protocol and a process for quality assurance and quality control of inventory data. The monitoring and verification plan shall be certified by an independent verifier accredited pursuant to subsection 46.13.5.

(c) Sequestration of carbon due to reforestation, improved forest management, or avoided conversion~~afforestation afforestation~~. To qualify for the award of CO₂ offset allowances under 46.13, offset projects that involve reforestation, improved forest management or avoided conversion~~sequester carbon through the conversion of land from a non-forested to forested condition~~ shall meet the all requirements of subsection 46.13.4(c) and the forest offset protocol, and all other applicable requirements of section 46.13:

(1) Eligibility. Eligible forest offset projects shall satisfy all eligibility requirements of the forest offset protocol and this Subpart

~~a. Eligible offset projects shall occur on land that has been in a non-forested state for at least ten (10) years preceding the commencement of the offset project.~~

~~b. Eligible offset projects shall be managed in accordance with widely accepted environmentally sustainable forestry practices and designed to promote the restoration of native forests by using mainly native species and avoiding the introduction of invasive non-native species. If commercial timber harvest activities are to occur, certification must be obtained, prior to any harvest activities at the site, through the Forest Stewardship Council (FSC), Sustainable Forestry Institute (SFI), American Tree Farm System (ATFS), or such other similar organizations as may be approved by the Department.~~

(2) Offset project description. The offset project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of paragraph (1) of this subdivision. The offset project description must include all information identified in sections 8.1 and

~~9.1 of the forest offset protocol, and any other information deemed necessary by the Department. The offset project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of 46.13.4(c)(1) of this subsection. The offset project narrative shall include the following information:~~

- ~~a. The owner of the land within the offset project boundary;~~
- ~~b. A detailed map of the land within the offset project boundary and areas adjacent to the offset project boundary;~~
- ~~c. A copy of the permanent conservation easement required under 46.13.4(c)(6) of this subsection;~~
- ~~d. For offset projects located in a state or United States jurisdiction that is not a participating state, a written legal opinion from an attorney licensed to practice in the state where the offset project is located, or from the cooperating regulatory agency, confirming the enforceability of the permanent conservation easement; and~~
- ~~e. Plant species to be planted or established via natural regeneration, and a forest management plan consistent with the requirements of 46.13.4(c)(1)b. of this subsection.~~

(3) Carbon sequestration baseline determination. Baseline onsite carbon stocks shall be determined as required by sections 6.1.1, 6.1.2, 6.2.1, 6.2.2, 6.2.3, 6.3.1, and 6.3.2 of the forest offset protocol, as applicable. The existing sequestered carbon within the offset project boundary shall be calculated prior to commencement of the offset project. The carbon sequestration baseline shall be determined based on a sum of measurements, made no more than 12 months prior to offset project commencement, of the carbon content of the following carbon pools:

- ~~a. Carbon content shall be calculated for the following required carbon pools:
 - ~~(i) live above-ground tree biomass;~~
 - ~~(ii) live below-ground tree biomass;~~
 - ~~(iii) soil carbon; and~~~~

~~(iv) dead organic matter, coarse woody debris, unless the baseline measurement for this carbon pool is at or near zero, in which case measurement of this carbon pool during the allocation period is optional.~~

~~b. Carbon content may be calculated for the following optional carbon pools:~~

~~(i) live above-ground non-tree biomass; and~~

~~(ii) dead organic matter, forest floor.~~

~~c. Carbon content shall be calculated individually for each carbon pool within the offset project boundary.~~

~~d. To increase the accuracy of measurement and verification, the area within the offset project boundary shall be divided into sub-populations that form relatively homogenous units. When defining sub-populations, the project sponsor shall consider vegetation and tree species, including existing vegetation and trees and those to be utilized as part of the offset project activity, and site factors, such as soil type, elevation, slope, age class, and other factors as warranted.~~

~~e. Calculation of sequestered carbon for each carbon pool in each reporting sub-population shall be based on the following:~~

$$\text{CO}_2 \text{ tons} = [(A \times C/\text{ha})(44 \text{ g/mol CO}_2/12 \text{ g/mol C})] / 0.9072 \text{ metric tons/short ton}$$

~~where:~~

~~A = Area in hectares within each reporting sub-population~~

~~C = Carbon content (metric tons of carbon for each carbon pool)~~

~~C/ha = Mean carbon content per hectare for each carbon pool~~

~~f. Total carbon contained within the offset project boundary (represented in CO₂ tons, calculated pursuant to 46.13.4(c)(3)e. of this subsection) shall be calculated as follows:~~

$$TC_{pb} = TC_{lath} + TC_{lbtb} + TC_s [+ TC_{lantb} + TC_{doff} + TC_{doewd}]$$

~~where:~~

~~TC_{pb} = Total carbon content within the offset project boundary (sum of carbon content of all carbon pools in all reporting sub-populations)~~

~~TC_{iattb} = Sum of carbon content of live above-ground tree biomass in all reporting sub-populations~~

~~TC_{ibtb} = Sum of carbon content of live below-ground tree biomass in all reporting sub-populations~~

~~TC_s = Sum of carbon content of soil carbon in all reporting sub-populations~~

~~TC_{lantb} [option] = Sum of carbon content of live above-ground non-tree biomass in all reporting sub-populations~~

~~TC_{deff} [option] = Sum of carbon content of dead organic matter, forest floor in all reporting sub-populations~~

~~TC_{doewd} [mandatory/option, as applicable pursuant to 46.13.4(e)(3)a.(iv) of this subsection] = Sum of carbon content of dead organic matter, coarse woody debris in all reporting sub-populations~~

~~g. Each individual carbon pool to be measured must be directly measured using a measurement protocol and sample size that achieves a demonstrated quantified accuracy for the combined carbon pool measurement such that there is 95% confidence that the resulting reported value is within 10% of the true mean. Measurement and sampling practices shall meet the following requirements:~~

~~(i) An adequate sample size that meets the requirements of 46.13.4(e)(3)g. of this subsection shall be determined for each sub-population.~~

~~(ii) The minimum number of required sampling plots for each sub-population shall not be less than 30, and shall be determined based on the following:~~

$$~~n = (s \times 1.960) / (\text{mean} \times re)^2~~$$

~~where:~~

~~n = required number of sample plots for each reporting sub-population~~

~~s = standard deviation~~

~~mean = mean reported carbon content for the sample population~~

~~re = level of sampling error (0.08) to assure a total maximum error of 10% for the 95% confidence~~

interval, which assumes total error due to measurement error of 0.02

~~h. Direct measurement procedures shall be consistent with current forestry good practice and the guidance contained in U.S. Department of Energy, Technical Guidelines Voluntary Reporting of Greenhouse Gases (1605(b)) Program; Section 3, Measurement Protocols for Forest Carbon Sequestration, in Chapter 1, (Emissions Inventories); Part I Appendix (Forestry), (March 2006).~~

- (4) Calculating carbon sequestered. Net GHG reductions and GHG removal enhancements shall be calculated as required by section 6 of the forest offset protocol. The project's risk reversal rating shall be calculated as required by Appendix D of the forest offset protocol. Carbon sequestration shall be determined using a base year approach, where the amount of carbon sequestered is measured as a net increase in carbon relative to the base year measurement. Carbon sequestration shall be the amount of net additional carbon sequestered during each reporting period, based upon aggregate carbon uptake and carbon emissions for the sum of carbon pools, relative to the baseline carbon content or the carbon content as of the previous reporting period, if above the baseline carbon content, as applicable. CO₂ offset allowances shall be issued based on the amount of net additional carbon sequestered within the offset project boundary during each reporting period, as represented in tons of CO₂. Sequestered carbon shall be calculated using a stock change approach as follows:

$$NCS_t = I_t - I_{t-1}$$

where:

NCS_t = Net carbon sequestered in reporting period t

I_t = Inventory of carbon stock for all carbon pools in all reporting sub-populations within the offset project boundary in reporting period t

I_{t-1} = Inventory of carbon stock for all carbon pools in all reporting sub-populations within the offset project boundary in the reporting period immediately preceding reporting period t

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- a. Except as provided in 46.13.4(c)(3)a.(iv) of this subsection, each of the carbon pools that were measured as part of the baseline determination must be re-measured using the same methodology, and to the same or better quantified precision consistent with the requirements of 46.13.4(c)(3)g. and

~~46.13.4(e)(3)h. of this subsection, as that used for the baseline determination.~~

~~b. The net change in each pool's carbon stock in each reporting sub-population is calculated by subtracting the baseline carbon stock (or carbon stock at the previous monitoring, if above the baseline carbon content) from the carbon stock at the time of the current monitoring. Determination of carbon stock shall be in accordance with the formulas and procedures in 46.13.4(e)(3) of this subsection.~~

~~c. Net carbon stock change for the offset project is the sum of the net changes in the carbon stock of all applicable pools in all reporting sub-populations within the offset project boundary, less ten percent (10%) to account for potential losses of sequestered carbon. This 10% discount shall not be required, provided the project sponsor retains long-term insurance, approved by the Department, that guarantees replacement of any lost sequestered carbon for which CO₂ offset allowances were awarded pursuant to 46.13.6(a)(1).~~

~~(4) ————— (5) ——— Monitoring and verification requirements.~~

~~(5) Monitoring and verification requirements. Monitoring and verification is subject to the following requirements. Total carbon stock within the offset project boundary shall be calculated not less than every five years. Monitoring and verification is subject to the following requirements.~~

~~a. Monitoring and verification reports shall include all forest offset project data reports submitted to the Department, including any additional data required by section 9.2.2 of the forest offset protocol.~~

~~b. The consistency application shall include a monitoring and verification plan certified by an independent verifier accredited pursuant to 46.13.5. The monitoring and verification plan shall consist of a forest carbon inventory program, as required by section 8.1 of the forest offset protocol.~~

~~c. Monitoring and verification reports shall be submitted not less than every six years, except that the first monitoring and verification report for reforestation projects must be submitted within twelve years of project commencement~~

(6) Forest Offset Project Data Reports A project sponsor shall submit a forest offset Project data report to the Department for each reporting period. Each forest offset project data report must cover a single reporting period. Reporting periods must be contiguous; there must be no gaps in reporting once the first reporting period has commenced.

(7) Prior to the award of CO₂ offset allowances pursuant to 46.13.6, or to any surrender of allowances pursuant to 46.13.4(c)(8), any quantity expressed in metric tons, or metric tons of CO₂ equivalent, shall be converted to tons using the conversion factor specified in 46.1.124.

~~a. Monitoring and verification reports shall include data from direct measurement of carbon content for all plots used to determine baseline and reporting period carbon content.~~

~~b. The project sponsor shall provide a monitoring and verification plan as part of the consistency application. The monitoring and verification plan shall be certified by an independent verifier accredited pursuant to subsection 46.13.5. The monitoring and verification plan shall include the following:~~

~~(i) Direct carbon measurement procedures consistent with the requirements of 46.13.4(c)(3)h. of this subsection.~~

~~(ii) The designation of sub-populations pursuant to 46.13.4(c)(3)d. of this subsection. The determination of the minimum number of sampling plots pursuant to 46.13.4(c)(3)g. of this subsection.~~

~~(iii) If commercial timber harvest activities have occurred or will occur, an assessment of management practices to ensure that the offset project has been or will be managed in accordance with environmentally sustainable forestry practices consistent with the Forest Stewardship Council (FSC), Sustainable Forestry Institute (SFI), American Tree Farm System (ATFS),~~

~~or such other similar organizations as may be approved by the Department.~~

~~(6)(8)~~ Carbon sequestration permanence. The offset project shall meet the following requirements to address ~~permanence reversals~~ of sequestered carbon.

(a) Unintentional reversals. Requirements for unintentional reversals are as follows:

(1) The project sponsor must notify the Department of the reversal and provide an explanation for the nature of the unintentional reversal within 30 calendar days of its discovery; and

(2) The project sponsor must submit to Department a verified estimate of current carbon stocks within the offset project boundary within one year of the discovery of the unintentional reversal.

(b) Intentional Reversals. Requirements for intentional reversals are as follows:

(1) If an intentional reversal occurs, the project sponsor shall, within 30 calendar days of the intentional reversal:

a. Provide notice, in writing, to the Department of the intentional reversal; and

b. Provide a written description and explanation of the intentional reversal to the Department.

(2) Within one year of the occurrence of an intentional reversal, the project sponsor shall submit to the Department a verified estimate of current carbon stocks within the offset project boundary.

(3) If an intentional reversal occurs, and CO₂ offset allowances have been awarded to the offset project, the forest owner must surrender to the Department or its

agent for retirement a quantity of CO₂ allowances corresponding to the quantity of CO₂ equivalent tons reversed within six months of notification by the Department.

a. Notification by the Department will occur after the verified estimate of carbon stocks has been submitted to the Department, or after one year has elapsed since the occurrence of the reversal if the project sponsor fails to submit the verified estimate of carbon stocks.

b. If the forest owner does not surrender valid CO₂ allowances to the Department within six months of notification by the Department, the forest owner will be subject to enforcement action and each CO₂ equivalent ton of carbon sequestration reversed will constitute a separate violation of this Part and applicable state law.

(4) Project Termination. Requirements for project termination are as follows:

a. The project sponsor must surrender to the Department or its agent for retirement a quantity of CO₂ Allowances in the amount calculated pursuant to project termination provisions in the forest offset protocol within six months of project termination.

b. If the project sponsor does not surrender to the Department or its agent a quantity of CO₂ Allowances in the amount calculated pursuant to project termination provisions in the forest offset protocol within six months of project

termination, they will be subject to enforcement action and each CO₂ offset allowance not surrendered will constitute a separate violation of this Part and applicable state law

(c) Disposition of Forest Sequestration Projects After a Reversal. If a reversal lowers the forest offset project's actual standing live carbon stocks below its project baseline standing live carbon stocks, the forest offset project will be terminated by the Department.

(9) Timing of forest offset projects. The Department may award CO₂ offset allowances under 46.13.6 only for forest offset projects that are initially commenced on or after January 1, 2014.

(10) Projects that Have Been Awarded Credits by a Voluntary Greenhouse Gas Reduction Program. The provisions of 46.4.3(h) and 46.13.3(b)(2) shall not apply to forest projects that have been awarded credits under a voluntary greenhouse gas reduction program provided that the following conditions are satisfied. For such projects, the number of CO₂ Offset Allowances will be calculated pursuant to the requirements of 46.13.4(c), without regard to quantity of credits that were awarded to the project under the voluntary program.

(a) The project satisfies all other general requirements of 46.13, including all specific requirements of 46.13.4(c), for all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO₂ offset allowances pursuant to 46.13.6.

(b) At the time of submittal of the consistency application for the project, the project submits forest offset data reports and a monitoring and verification report covering all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO₂ offset allowances pursuant to 46.13.6. Forest offset data reports and monitoring and verification reports must meet all requirements of 46.13.4(c)(5) and (6).

(c) The consistency application includes information sufficient to allow the Department to make the following determinations, and the voluntary greenhouse gas program has published information on its website to allow the Department to verify the information included in the consistency application.

(1) The offset project has met all legal and contractual requirements to allow it to terminate its relationship with the voluntary greenhouse gas program, and such termination has been completed.

(2) The project sponsor or voluntary greenhouse gas program has cancelled or retired all credits that were awarded for carbon sequestration that occurred during the time periods for which the project intends to be awarded CO₂ offset allowances pursuant to 46.13.6, and such credits were cancelled or required for the sole purpose of allowing the project to be awarded CO₂ offset allowances pursuant to 46.13.6.

~~a. The project sponsor shall place the land within the offset project boundary under a legally binding permanent conservation easement, approved by the Department that requires the land to be maintained in a forested state in perpetuity.~~

~~b. The conservation easement shall include a requirement that the carbon density within the offset project boundary be maintained at long term levels at or above that achieved as of the end of the CO₂ offset crediting period pursuant to 46.13.2(e)(2).~~

~~c. The conservation easement shall require that the land be managed in accordance with environmentally sustainable forestry practices.~~

(d) Reduction or avoidance of CO₂ emissions from natural gas, oil, or propane end-use combustion due to end-use energy efficiency. To qualify for the

award of CO₂ offset allowances under 46.13, 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 shall meet the requirements of subsection 46.13.4(d) and all other requirements of section 46.13. 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.

(1) Eligibility.

- a. Eligible offset projects shall reduce CO₂ emissions through one or more of the following energy conservation measures (ECMs):
 - (i) Improvements in the energy efficiency of combustion equipment that provide space heating and hot water, including a reduction in fossil fuel consumption through the use of solar and geothermal energy;
 - (ii) Improvements in the efficiency of heating distribution systems, including proper sizing and commissioning of heating systems;
 - (iii) Installation or improvement of energy management systems;
 - (iv) Improvement in the efficiency of hot water distribution systems and reduction in demand for hot water;
 - (v) Measures that improve the thermal performance of the building envelope and/or reduce building envelope air leakage;
 - (vi) Measures that improve the passive solar performance of buildings and utilization of active heating systems using renewable energy; and
 - (vii) Fuel switching to a less carbon-intensive fuel for use in combustion systems, including the use of liquid or gaseous eligible biomass, provided that conversions to electricity are not eligible.

b. Performance standards.

(i) All end-use energy efficiency offset projects. All offset projects under this subsection shall meet the applicable performance criteria set forth below:

(A) Installation best practice. Any combustion equipment and related air handling equipment (HVAC systems) installed as part of an offset project shall be sized and installed in accordance with the applicable requirements and specifications outlined in 1. and 2. below:

1. Commercial HVAC systems shall meet the applicable sizing and installation requirements of ANSI/ASHRAE/IESNA Standard 90.1-~~2007~~(: ~~SI Edition~~)-2010: Energy Standard for Buildings Except Low-Rise Residential Buildings and ANSI/ASHRAE Standard 62-~~1-2007~~.2-2010: Ventilation for Acceptable Indoor Air Quality.

2. Residential HVAC systems shall meet the applicable sizing specifications of Air Conditioner Contractors of America (ACCA) Manual J: Residential Load Calculation (Eighth Edition - Full), ~~Version 2.00, March 2006~~ and the applicable installation specifications ~~ANSI/ACCA 5 QI – 2007 “HVAC Quality Installation Specification” of Air Conditioner Contractors of America (ACCA), ANSI/ACCA 5 QI-2007, HVAC Quality Specification: Residential and Commercial Heating, Ventilating, and Air Conditioning (HVAC) Applications, 2007.~~

(B) Whole-building energy performance. Eligible new buildings or whole-building retrofits that are part of an offset project shall meet the requirements in 1. and 2. below:

1. Commercial buildings shall exceed the energy performance requirements of ANSI/ASHRAE/IESNA 90.1 (SI Edition) 2010~~Standard 90.1-2007~~: Energy Standard for Buildings Except Low-Rise Residential Buildings by 30%, with the exception of multi-family residential buildings classified as commercial by ANSI/ASHRAE/IESNA Standard 90.1 (SI Edition) 2010-2007, which shall exceed these energy performance requirements by 20%.
2. Residential buildings shall exceed the energy performance requirements of the 2006-2012 International Energy Conservation Code Supplement by 30%.

~~(ii) Offset projects commenced before January 1, 2009. Energy conservation measures implemented as part of an offset project commenced before January 1, 2009 shall meet the performance and prescriptive criteria set forth below.~~

~~(A) Combustion equipment. Combustion equipment installed as part of an offset project commenced before January 1, 2009 shall meet the energy efficiency performance standards contained below:~~

- ~~1. Commercial boilers. Commercial boilers shall meet or exceed the energy efficiency criteria in Table 2 below.~~

1. Table 2 Minimum Commercial Boiler Energy Efficiency			
<u>Technology</u>	<u>Size (Btu/hr)</u>	<u>Rating Method</u>	

Gas-fired ^a	125,000-300,000	AFUE	≥88.0%
	300,000-12,500,000	Thermal Efficiency ^b	≥90.0%
Oil-fired	>300,000	Thermal Efficiency	≥88.0%

^a Gas-fired boilers shall be installed with controls that allow the boiler to operate in condensing mode and installed with vents designed for positive vent static pressure and vent gas temperature that leads to condensate production in the vent.

^b Thermal Efficiency is defined as useful energy output (Btu) divided by energy input (Btu), and presented as a percentage. This shall be measured under steady state conditions, at full rated useful thermal output, 140°F supply from, and 120°F return water temperature to, the boiler.

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2. Residential combustion equipment. Residential combustion equipment, including furnaces, boilers, and water heaters, shall meet or exceed the energy efficiency criteria in Table 3 below.

4. Table 3 Minimum Residential Combustion Equipment ^a Energy Efficiency		
Technology	Rating Method	Minimum Efficiency
Gas-fired furnace	AFUE	≥94%
Oil-fired furnace	AFUE	≥92%

Gas/oil-fired boiler	AFUE	≥90%
Gas/oil-fired water heater	Energy Factor ^a	≥0.62

~~^aFor furnaces, defined as equipment with a heat input rate of less than 225,000 Btu/hr; for boilers, defined as equipment with a heat input rate of less than 300,000 Btu/hr; for water heaters, defined as equipment subject to 10 CFR 430.~~

~~(B) Other energy conservation measures. All other energy conservation measures implemented as part of an offset project shall meet the prescriptive requirements, as applicable, in Energy Benchmark for High Performance Buildings, Version 1.1, New Buildings Institute, 2005 (herein referred to as EBHPB), or state building energy codes, whichever result in better energy performance. Energy conservation measures without specified performance criteria in the referenced EBHPB shall meet the requirements of Federal Energy Management Program (FEMP) Product Energy Efficiency Recommendations, issued pursuant to Executive Orders 13123 and 13221, or Energy Star criteria issued jointly by the U.S. Environmental Protection Agency and U.S. Department of Energy, whichever result in better energy performance.~~

~~(iii)(ii) Maximum market penetration rate for offset projects commenced on or after January 1, 2009. For offset projects initiated on or after January 1, 2009, the project sponsor shall demonstrate, to the satisfaction of the Department, that the energy conservation measures implemented as part of the offset project have a market penetration rate of less than 5%.~~

(2) Offset project description. The offset project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of 46.13.4(d)(1) of this subsection. The offset project narrative shall include the following information:

- a. The location and specifications of the building(s) where the offset project actions will occur;
 - b. The owner and operator of the building(s);
 - c. The parties implementing the offset project, including lead contractor(s), subcontractors, and consulting firms;
 - d. Specifications of equipment and materials to be installed as part of the offset project; and
 - e. Building plans and offset project technical schematics, as applicable.
- (3) Emissions baseline determination. The emissions baseline shall be determined in accordance with the requirements of this subsection, based on energy usage (MMBtu) by fuel type for each energy conservation measure, derived using historic fuel use data from the most recent calendar year for which data is available, and multiplied by an emissions factor and oxidation factor for each respective fuel in Table 24 below.

<u>Table 24</u> Emissions and Oxidation Factors		
<u>Fuel</u>	<u>Emissions Factor</u> (lbs. CO ₂ /MMBtu)	<u>Oxidation Factor</u>
Natural Gas	116.98	0.995
Propane	139.04	0.995
Distillate Fuel Oil	161.27	0.99
Kerosene	159.41	0.99

- a. Isolation of applicable energy conservation measure baseline. The baseline energy usage of the application to be targeted by the energy conservation measure shall be isolated in a manner consistent with the guidance at 46.13.4(d)(5) of this

subsection.

- b. Annual baseline energy usage shall be determined as follows:

$$\text{Energy Usage (MMBtu)} = \text{BEU}_{\text{AECM}} \times A$$

where:

BEU_{AECM} = Annual pre-installation baseline energy use by fuel type (MMBtu) attributable to the application(s) to be targeted by the energy conservation measure(s). If applicable building codes or equipment standards require that equipment or materials installed as part of the offset project meet certain minimum energy performance requirements, baseline energy usage for the application shall assume that equipment or materials are installed that meet such minimum requirements. For offset projects that replace existing combustion equipment, the assumed minimum energy performance required by applicable building codes or equipment standards shall be that which applies to new equipment that uses the same fuel type as the equipment being replaced. Baseline energy usage shall be determined in accordance with the applicable requirements at 46.13.4(d)(5) of this subsection.

A = Adjustments to account for differing conditions during the two time periods (pre-installation and post-installation), such as weather, building occupancy, and changes in building use or function. Adjustments shall be determined in accordance with the applicable requirements at 46.13.4(d)(5) of this subsection.

- c. Annual baseline emissions shall be determined as follows:

$$\text{Emissions (lbs. CO}_2\text{)} = \sum_{i=1}^n \text{BEU}_i \times \text{EF}_i \times \text{OF}_i$$

where:

BEU_i = Annual baseline energy usage for fuel type i (MMBtu) demonstrated pursuant to the requirements in 46.13.4(d)(5)a. through d. of this subsection.

EF_i = Emissions factor (lbs. CO₂/MMBtu) for fuel type i listed at 46.13.4(d)(3), Table 4-2 of this subsection.

OF_i = Oxidation factor for fuel type i listed at 46.13.4(d)(3), Table 4 of this subsection.

- (4) Calculating emissions reductions. Emissions reductions shall be determined based upon annual energy savings by fuel type (MMBtu) for each energy conservation measure, multiplied by the emissions factor and oxidation factor for the respective fuel type at 46.13.4(d)(3), Table 4 of this subsection.

- a. Annual energy savings shall be determined as follows:

Energy Savings (MMBtu) = $(BEU_{AECM} \times A) - (PIEU_{ECM} \times A)$
where:

BEU_{AECM} = Annual pre-installation baseline energy use by fuel type (MMBtu) calculated pursuant to 46.13.4(d)(5)a. through d. of this subsection.

$PIEU_{ECM}$ = Annual post-installation energy use by fuel type (MMBtu) attributable to the energy conservation measure. Post-installation energy usage shall be determined in accordance with the applicable requirements at 46.13.4(d)(5)a. through d. of this subsection.

A = Adjustments to account for any differing conditions during the two time periods (pre-installation and post-installation), such as weather, building occupancy, and changes in building use or function. Adjustments shall be determined in accordance with the applicable requirements of 46.13.4(d)(5) of this subsection.

- b. Annual emissions reductions shall be determined as follows:

$$\text{Emissions Reduction (lbs. CO}_2\text{)} = \sum_{i=1}^n ES_i \times EF_i \times OF_i$$

where:

ES_i = Energy savings for fuel type i (MMBtu) demonstrated pursuant to the requirements at 46.13.4(d)(5) of this subsection.

EF_i = Emissions factor (lbs. CO₂/MMBtu) for fuel type i listed at 46.13.4(d)(3), Table 4 of this subsection.

OF_i = Oxidation factor for fuel type i listed at 46.13.4(d)(3), Table 4 of this subsection.

- (5) Monitoring and verification requirements. As part of the consistency application, the project sponsor shall provide a monitoring and verification plan certified by an independent verifier accredited pursuant to section 46.13.5. Annual monitoring and verification reports shall be certified by an independent verifier accredited pursuant to section 46.13.5. Independent verifiers must conduct a site audit when reviewing the first monitoring and verification report submitted by the project sponsor, except for offset projects that save less than 1,500 MMBtu per year. For offset projects that save less than 1,500 MMBtu per year, the project sponsor must provide the independent verifier with equipment specifications and copies of equipment invoices and other relevant offset project-related invoices. All offset project documentation, including the consistency

application and monitoring and verification reports, shall be signed by a Professional Engineer, identified by license number. Monitoring and verification shall also meet the following requirements.

- a. General energy measurement and verification requirements. Monitoring and verification of energy usage shall be demonstrated through a documented process consistent with the following protocols and procedures, as applicable.
 - (i) For existing commercial buildings, determination of baseline energy usage shall be consistent with the International Performance Measurement & Verification Protocol, Volume I: Concepts and Options for Determining Energy and Water Savings (IPMVP), “Option B. Retrofit Isolation” and “Option D. Calibrated Simulation.” If a building project involves only energy conservation measures implemented as part of a CO₂ emissions offset project, a process consistent with IPMVP “Option C. Whole Facility” may be used, as applicable. Application of the IPMVP general guidance shall be consistent with the applicable detailed specifications in ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings.
 - (ii) For new commercial buildings, determination of baseline energy usage shall be consistent with the International Performance Measurement & Verification Protocol, Volume III: Concepts and Options for Determining Energy Savings in New Construction (IPMVP), “Option D. Calibrated Simulation.” Application of the IPMVP general guidance shall be consistent with the applicable detailed specifications in ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings.
 - (iii) For existing and new residential buildings, determination of baseline energy usage shall be consistent with the requirements of the RESNET [National Energy Rating Technical Standards and National Home Energy Rating Technical Guidelines, 2006/2013 \(Chapter 3 and Appendix A of 2006 Mortgage Industry National Home Energy Rating System Standards\) \(Residential Energy Services Network, Inc.\) and the National Home Energy Rating](#)

~~Technical Guidelines, 2006 Mortgage Industry National Home Energy Rating System Standards, Chapter 3, National Energy Rating Technical Standards and Appendix A, National Home Energy Rating Technical Guidelines, On-Site Inspection Procedures for Minimum Rated features of 2006.~~

- b. Isolation of applicable energy conservation measure. In calculating both baseline energy usage and energy savings, the applicant shall isolate the impact of each eligible energy conservation measure (ECM), either through direct metering or energy simulation modeling. For offset projects with multiple ECMs, and where individual ECMs can affect the performance of others, the sum of energy savings due to individual ECMs shall be adjusted to account for the interaction of ECMs. For commercial buildings, this process shall be consistent with the requirements of ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings, and ANSI/ASHRAE/IESNA Standard 90.1 (SI Edition)-2010/90.1-2007: Energy Standard for Buildings Except Low-Rise Residential Buildings. For residential buildings, this process shall be consistent with the requirements of RESNET (Residential Energy Services Network, Inc.) and the National Home Energy Rating Technical Guidelines, 2006 Mortgage Industry National Home Energy Rating System Standards, Chapter 3, National Energy Rating Technical Standards and Appendix A, National Home Energy Rating Technical Guidelines, On-Site Inspection Procedures for Minimum Rated Features, 2006. and adopted enhancements dated 2007-2012

- (i) Reductions in energy usage due to the energy conservation measure shall be based upon actual energy usage data. Energy simulation modeling shall only be used to determine the relative percentage contribution to total fuel usage (for each respective fuel type) of the application targeted by the energy conservation measure.

- c. Calculation of energy savings. Annual energy savings are to be determined based on the following:

$$\text{Energy Savings (MMBtu)} = (\text{BEU}_{\text{AECM}} \times \text{A}) - (\text{PIEU}_{\text{ECM}} \times \text{A})$$

where:

BEU_{AECM} = Annual pre-installation baseline energy use by fuel type (MMBtu) attributable to the application(s) to be targeted by the energy conservation measure(s), based upon annual fuel usage data for the most recent calendar year for which data is available. For new buildings, baseline energy use for a reference building equivalent in basic configuration, orientation, and location to the building in which the eligible energy conservation measure(s) is implemented shall be determined according to ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings and ANSI/ASHRAE/IESNA Standard 90.1 (SI Edition)-201090.1-2007, Section 11 and Appendix G. Where energy simulation modeling is used to evaluate an existing building, modeling shall be conducted in accordance with ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings, and ANSI/ASHRAE/IESNA Standard 90.1 (SI Edition)-201090.1-2007, Section 11 and Appendix G. For existing and new residential buildings, energy simulation modeling shall be conducted in accordance with the requirements of RESNET (Residential Energy Services Network, Inc.) and the National Home Energy Rating Technical Guidelines, 2006 Mortgage Industry National Home Energy Rating System Standards, Chapter 3, National Energy Rating Technical Standards and Appendix A, National Home Energy Rating Technical Guidelines, On-Site Inspection Procedures for Minimum Rated Features, 2006- and adopted enhancements dated 2007-2012;

$PIEU_{ECM}$ = Annual post-installation energy use by fuel type (MMBtu) attributable to the energy conservation measure, to be verified based on annual energy usage after installation of the energy conservation measure(s), consistent with the requirements of ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings. Where energy simulation modeling is used to evaluate a new or existing building, modeling shall be conducted in accordance with ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings, and ANSI/ASHRAE/IESNA Standard 90.1 (SI Edition)-201090.1-2007, Section 11 and Appendix G. For existing and new residential buildings, energy simulation modeling shall be consistent with the requirements of RESNET (Residential Energy Services Network, Inc.) and the National Home Energy Rating Technical Guidelines, 2006 Mortgage Industry National Home Energy Rating System Standards, Chapter 3, National Energy Rating Technical

Standards and Appendix A, National Home Energy Rating Technical Guidelines, On-Site Inspection Procedures for Minimum Rated Features, 2006. and adopted enhancements dated 2007-2012

A = Adjustments to account for any differing conditions during the two time periods (pre-installation and post-installation), such as weather (weather normalized energy usage based on heating and cooling degree days), building occupancy, and changes in building use or function. For commercial buildings, adjustments shall be consistent with the specifications of ASHRAE Guideline 14-2002, Measurement of Energy and Demand Savings, and ANSI/ASHRAE/IESNA Standard 90.1 (SI Edition)-201090.1-2007, Section 11 and Appendix G. For residential buildings, adjustments shall be consistent with the specifications of RESNET (Residential Energy Services Network, Inc.) and the National Home Energy Rating Technical Guidelines, 2006 Mortgage Industry National Home Energy Rating System Standards, Chapter 3, National Energy Rating Technical Standards and Appendix A, National Home Energy Rating Technical Guidelines, On-Site Inspection Procedures for Minimum Rated Features, 2006 and adopted enhancements dated 2007-2012.-

- d. Provision for sampling of multiple like offset projects in residential buildings. Offset projects that implement similar measures in multiple residential buildings may employ representative sampling of buildings to determine aggregate baseline energy usage and energy savings. Sampling protocols shall employ sound statistical methods such that there is 95% confidence that the reported value is within 10% of the true mean. Any sampling plan shall be certified by an independent verifier, accredited pursuant to subsection 46.13.5.
- (e) Avoided methane emissions from agricultural manure management operations. To qualify for the award of CO₂ offset allowances under 46.13, offset projects that capture and destroy methane from animal manure and organic food waste using anaerobic digesters shall meet the requirements of subsection 46.13.4(e) and all other applicable requirements of section 46.13:
 - (1) Eligibility.
 - a. Eligible offset projects shall consist of the destruction of that portion of methane generated by an anaerobic digester that

would have been generated in the absence of the offset project through the uncontrolled anaerobic storage of manure or organic food waste that would have been stored under anaerobic conditions in the absence of the offset project.

- b. Eligible offset projects shall employ only manure-based anaerobic digester systems using livestock manure as the majority of digester feedstock, defined as more than 50% of the mass input into the digester on an annual basis. Organic food waste used by an anaerobic digester shall only be that which would have been stored in anaerobic conditions in the absence of the offset project.
- c. The provisions of 46.13.2(~~dc~~)(2) and 46.13.2(~~dc~~)(3) shall not apply to agricultural manure management offset projects provided either of the following requirements are met.
 - (i) The offset project is located in a state that has a market penetration rate for anaerobic digester projects of 5% or less. The market penetration determination shall utilize the most recent market data available at the time of submission of the consistency application pursuant to subsection 46.13.3 and shall be determined as follows:

$$MP (\%) = MG_{AD} / MG_{STATE}$$

where:

MG_{AD} = Average annual manure generation for the number of dairy cows and swine serving all anaerobic digester projects in the applicable state at the time of submission of a consistency application pursuant to subsection 46.13.3.

MG_{STATE} = average annual manure production of all dairy cows and swine in the state at the time of submission of a consistency application pursuant to subsection 46.13.3.

- (ii) The project is located at a farm with 4,000 or less head of dairy cows, or a farm with equivalent animal units, assuming an average live weight for dairy cows (lbs./cow) of 1,400 lbs., or, if the project is a regional-type digester, total annual manure input to the digester is designed to be less than the average annual manure produced by a farm with 4,000 or less head of dairy cows, or a farm with equivalent animal units, assuming

an average live weight for dairy cows (lbs./cow) of 1,400 lbs.

- (2) Offset project description. The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of 46.13.4(e)(1) of this subsection. The offset project narrative shall include the following information:
- a. The owner and operator of the offset project;
 - b. The location and specifications of the facility where the offset project will occur;
 - c. The owner and operator of the facility where the offset project will occur;
 - d. The specifications of the equipment to be installed and a technical schematic of the offset project; and
 - e. The location and specifications of the facilities from which anaerobic digester influent will be received, if different from the facility where the offset project will occur.
- (3) Emissions baseline determination. The emissions baseline shall represent the potential emissions of the methane that would have been produced in a baseline scenario under uncontrolled anaerobic storage conditions and released directly to the atmosphere in the absence of the offset project.

- a. Baseline methane emissions shall be calculated as follows:

$$\text{CO}_2\text{e (tons)} = (\text{V}_m \times \text{M}) / 2000 \times \text{GWP}$$

where:

CO_2e = Potential CO_2e emissions due to calculated methane production under site-specific anaerobic storage and weather conditions

V_m = Volume of methane produced each month from degradation of volatile solids in a baseline uncontrolled anaerobic storage scenario under site-specific storage and weather conditions for the facility at which the manure or organic food waste is generated (ft^3)

M = Mass of methane per cubic foot (0.04246 lb/ft^3 default value at one atmosphere and 20°C)

GWP = Global warming potential of methane (2325)

- b. The estimated amount of volatile solids degraded each month under the uncontrolled anaerobic storage baseline scenario (kg) shall be calculated as follows:

$$VS_{deg} = VS_{avail} \times f$$

where:

VS = volatile solids as determined from the equation:

$$VS = M_m \times TS\% \times VS\%$$

where:

M_m = mass of manure or organic food waste produced per month (kg)

$TS\%$ = concentration (percent) of total solids in manure or organic food waste as determined through USGS I-3750 (USGS, Methods for the Determination of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the United States Geological Survey, Book 5, Chapter A1, Method Number I-3750, "Solids, residue on evaporation at 105 degrees C, total, gravimetric") and

$VS\%$ = concentration (percent) of volatile solids in total solids as determined through EPA 160.4 testing method (U.S.EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020))

VS_{avail} = volatile solids available for degradation in manure or organic food waste storage each month as determined from the equation:

$$VS_{avail} = VS_p + \frac{1}{2} VS_{in} - VS_{out}$$

where:

VS_p = volatile solids present in manure or organic food waste storage at beginning of month (left over from previous month) (kg)

VS_{in} = volatile solids added to manure or organic food waste storage during the course of the month (kg). The factor of $\frac{1}{2}$ is multiplied by this number to represent the average mass of volatile solids available for degradation for the entire duration of the month.

VS_{out} = volatile solids removed from the manure or organic food waste storage for land application or export (assumed value based on standard farm practice)

f = van't Hoff-Arrhenius factor for the specific month as determined using the equation below. Using a base temperature of 30° C, the equation is as follows:

$$f = \exp\{[E(T_2 - T_1)]/[(GC \times T_1 \times T_2)]\}$$

where:

f = conversion efficiency of VS to CH₄ per month

E = activation energy constant (15,175 cal/mol)

T₂ = average monthly ambient temperature for facility where manure or organic food waste is generated (converted from degrees Celsius to degrees Kelvin) as determined from the nearest National Weather Service certified weather station (if T₂ > 5° C; if T₂ < 5° C, then F = 0.104);

T₁ = 303.15 (30° C converted to °K)

GC = ideal gas constant (1.987 cal/K mol)

- c. The volume of methane produced (ft³) from degradation of volatile solids shall be calculated as follows:

$$V_m = (VS_{deg} \times B_o) \times 35.3147 \text{ ft}^3/\text{m}^3$$

where:

V_m = volume of methane (ft³)

VS_{deg} = volatile solids degraded (kg)

B_o = manure or organic food waste type-specific maximum methane generation constant (m³ CH₄/kg VS degraded). For dairy cow manure, B_o = 0.24 m³ CH₄/kg VS degraded. The methane generation constant for other types of manure shall be those cited at U.S. EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-~~2005~~2010, Annex 3, Table A-162 (U.S. EPA, April ~~2007~~2012), unless the project sponsor proposes an alternate methane generation constant. If the project sponsor proposes to use a methane generation constant other than the ones found in the above-cited reference, the project sponsor must provide justification and documentation to the Department.

- (4) Calculating emissions reductions. Emissions reductions shall be determined based on the the potential emissions (in tons of CO₂e) of

the methane that would have been produced in the absence of the offset project under a baseline scenario that represents uncontrolled anaerobic storage conditions, as calculated pursuant to 46.13.4(e)(3)a. through 46.13.4(e)(3)c. of this subsection, and released directly to the atmosphere. Emissions reductions may not exceed the potential emissions of the anaerobic digester, as represented by the annual volume of methane produced by the anaerobic digester, as monitored pursuant to 46.13.4(e)(5) of this subsection. If the project is a regional-type digester, CO₂ emissions due to transportation of manure and organic food waste from the site where the manure and organic food waste was generated to the anaerobic digester shall be subtracted from the emissions reduction calculated pursuant to 46.13.4(e)(3)a. through 46.13.4(e)(3)c. of this subsection. Transportation related CO₂ emissions shall be determined through one of the following methods.

- a. Documentation of transportation fuel use for all shipments of manure and organic food waste from off-site to the anaerobic digester during each reporting year and a log of transport miles for each shipment. CO₂ emissions shall be determined through the application of an emissions factor for the fuel type used. If this option is chosen, the following emissions factors shall be applied as appropriate:
 - (i) Diesel fuel: 22.912 lbs. CO₂/gallon.
 - (ii) Gasoline: 19.878 lbs. CO₂/gallon.
 - (iii) Other fuel: submitted emissions factor approved by the Department.

- b. Documentation of total tons of manure transported from off-site for input into the anaerobic digester during each reporting year, as monitored pursuant to 46.13.4(e)(5)a. of this subsection, and a log of transport miles for each shipment. CO₂ emissions shall be determined through the application of a ton-mile transport emission factor for the fuel type used. If this option is chosen, the following emissions factors shall be applied as appropriate for each ton of manure delivered, and multiplied by the number of miles transported.
 - (i) Diesel fuel: 0.131 lbs. CO₂ per ton-mile,
 - (ii) Gasoline: 0.133 lbs. CO₂ per ton-mile, or.

(iii) Other fuel: submitted emissions factor approved by the Department.

- (5) Monitoring and verification requirements. Offset projects shall employ a system that provides metering of biogas volumetric flow rate and determination of methane concentration. Annual monitoring and verification reports shall include monthly biogas volumetric flow rate and methane concentration determination. Monitoring and verification shall also meet the following requirements.
- a. If the offset project is a regional-type digester, manure and organic food waste from each distinct source supplying to the anaerobic digester shall be sampled monthly to determine the amount of volatile solids present. Any emissions reduction will be calculated according to mass of manure (kg) and organic food waste (kg) being digested and percentage of volatile solids present before digestion, consistent with the requirements of 46.13.4(e)(3) and 46.13.4(e)(5)c. of this subsection, and apportioned accordingly. The project sponsor shall provide supporting material and receipts tracking the monthly receipt of manure (kg) and organic food waste (kg) used to supply the anaerobic digester from each manure supplier.
 - b. If the offset project includes the digestion of organic food waste eligible pursuant to 46.13.4(e)(1)b. of this subsection, organic food waste shall be sampled monthly to determine the amount of volatile solids present before digestion, consistent with the requirements of 46.13.4(e)(3) and 46.13.4(e)(5)c. of this subsection, and apportioned accordingly.
 - c. The project sponsor shall submit a monitoring and verification plan as part of the consistency application that includes a quality assurance and quality control program associated with equipment used to determine biogas volumetric flow rate and methane composition. The monitoring and verification plan shall be specified in accordance with the applicable monitoring requirements listed in Table ~~5-3~~ (Input Monitoring Requirements) below. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated, and calibrated based on manufacturer's recommendations, as well as provisions for the retention of maintenance records for audit purposes. The monitoring and verification plan shall be

certified by an independent verifier accredited pursuant to subsection 46.13.5.

- d. The project sponsor shall verify biogas methane composition quarterly through gas sampling and third party laboratory analysis using applicable U.S. EPA test methods.

Table 53
Input Monitoring Requirements

Input Parameter	Measurement Unit	Frequency of Sampling	Sampling Method(s)
Influent flow (mass) into the digester	Kilograms (kg) per month (wet weight)	Monthly total into the digester	a) Recorded weight b) Digester influent pump flow c) Livestock population and application of American Society of Agricultural and Biological Engineers (ASABE) standard (ASAE D384.2, March 2005)
Influent total solids concentration (TS)	Percent (of sample)	Monthly, depending upon recorded variations	USGS, Methods for the Determination of Inorganic Substances in Water and Fluvial Sediments, Techniques of Water-Resources Investigations of the United States Geological Survey, Book 5, Chapter A1, Method Number I-3750, "Solids, residue on evaporation at 105 degrees C, total, gravimetric"
Influent volatile solids (VS) concentration	Percent (of TS)	Monthly, depending upon recorded variations	USEPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020)
Average monthly ambient temperature	Temperature °C	Monthly (based on farm averages)	Closest National Weather Service-certified weather station

46.13.5 Accreditation of independent verifiers.

- (a) Standards for accreditation. Independent verifiers must be accredited by the Department to provide verification services as required of project sponsors under this section, after meeting all of the requirements of this subsection.
 - (1) Verifier minimum requirements. Each accredited independent verifier shall demonstrate knowledge of the following topics:
 - a. Utilizing engineering principles;
 - b. Quantifying greenhouse gas emissions;
 - c. Developing and evaluating air emissions inventories;
 - d. Auditing and accounting principles;
 - e. Knowledge of information management systems;
 - f. Knowledge of the requirements of this section and other applicable requirements of this regulation; and
 - g. Such other qualifications as may be required by the Department to provide competent verification services as required for individual offset categories specified at subsection 46.13.4.
 - (2) Organizational qualifications. Accredited independent verifiers shall demonstrate that they meet the following requirements:
 - a. 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;
 - b. Verifiers shall employ staff with knowledge, experience, and where appropriate professional licenses relevant to the specific category(ies) of offset projects in subsection 46.13.4 that they seek to verify;
 - c. 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

d. 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 46.13.3(e), and remedy any such conflicts of interest prior to providing verification services.

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

f(b) Application for accreditation. An application for accreditation shall not contain any proprietary information, and shall include on a form prescribed by the Department the following:

- (1) The applicant's name, address, e-mail address, telephone number, and facsimile transmission number (if any);
- (2) Documentation that the applicant has at least two years of experience in each of the knowledge areas specified at 46.13.5(a)(1)a. through 46.13.5(a)(1)e. of this subsection, and as may be required pursuant to 46.13.5(a)(1)g. of this subsection;
- (3) Documentation that the applicant has successfully completed the requirements of 46.13.5(a)(3) of this subsection, as applicable;
- (4) A sample of at least one work product that provides supporting evidence that the applicant meets the requirements at 46.13.5(a)(1) and 46.13.5(a)(2) of this subsection. 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 46.13.5(a)(2)c. of this subsection.
- (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 46.13.5(a)(2)d. of this subsection.

- (c) Department action on applications for accreditation. The Department shall approve or deny a complete application for accreditation within ~~ninety~~ ~~(90)~~ forty-five (45) days after submission. Upon approval of an application for accreditation, the independent verifier shall be accredited for a period of three (3) years from the date of application approval.
- (d) Reciprocity. Independent verifiers accredited in other participating states may be deemed to be accredited in Rhode Island, at the discretion of the Department.
- (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 Department 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 Department 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 Department may reject a verification report and certification statement from an accredited verifier, submitted as part of a consistency application required pursuant to subsection 46.13.3(b) or submitted as part of a monitoring and verification report submitted pursuant to subsection 46.13.6(b), if the Department determines that the accredited verifier has a conflict of interest related to the offset project, offset project developer, or project sponsor.
 - (4) The Department may revoke the accreditation of a verifier at any time given cause, for the following:
 - a. 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;
 - b. The verifier is no longer qualified due to changes in staffing or

other criteria;

- c. negligence or neglect of responsibilities pursuant to the requirements of this subsection; and
- d. intentional misrepresentation of data or other intentional fraud.

46.13.6 Award and recordation of CO₂ offset allowances.

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

(1) Award of CO₂ offset allowances.

- a. CO₂ emissions offset projects. Following the issuance of a consistency determination under 46.13.3(e)(2) and the approval of a monitoring and verification report under the provisions of 46.13.6(e) of this subsection, the Department or their designee shall award one CO₂ offset allowance for each ton of demonstrated reduction in CO₂ or CO₂ equivalent emissions or sequestration of CO₂.

~~b. CO₂ emissions credit retirement. If a project sponsor received a consistency determination pursuant to 46.13.3(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 subsection 46.13.6(a)(1), the Department 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 on or before 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 include the following information.
- (1) The project's sponsor's name, address, e-mail address, telephone number, facsimile transmission number (if any), and account number.
 - (2) The CO₂ emissions reduction or CO₂ sequestration determination as required by the relevant provisions of subsection 46.13.4, including a demonstration that the project sponsor complied with the required quantification, monitoring, and verification procedures under subsection 46.13.4, as well as those outlined in the consistency application approved pursuant to 46.13.3(e)(2).
 - (3) A signed statement by the offset project sponsor 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 section 46.13 of Air Pollution Control Regulation No. 46 – "CO₂ Budget Trading Program". 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 section 46.13 of Air Pollution Control Regulation No. 46 – "CO₂ Budget Trading Program" is contingent on meeting the requirements of section 46.13 of Air Pollution Control Regulation No. 46 – "CO₂ Budget Trading Program". I authorize the Department 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 Department. I understand that this right to audit shall include the right to enter the physical location of the offset project and to make available to the Department or its agent any and all documentation relating to the offset project at the Department's request. I submit to the legal jurisdiction of the State of Rhode Island."
 - (4) A certification signed by the offset project sponsor certifying that all offset projects for which the sponsor has received offset allowances under this section or any similar provisions in the rules of other participating states that are 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 subsection 46.13.5 documenting that the independent verifier has reviewed the

monitoring and verification report and evaluated the following in relation to the applicable requirements of subsection 46.13.4, and any applicable guidance issued by the Department.

- a. The adequacy and validity of information supplied by the project sponsor to determine CO₂ emissions reductions or CO₂ sequestration pursuant to the applicable requirements of subsection 46.13.4.
 - b. The adequacy and consistency of methods used to quantify, monitor, and verify CO₂ emissions reductions and CO₂ sequestration in accordance with the applicable requirements in subsection 46.13.4 and as outlined in the consistency application approved pursuant to 46.13.3(e)(2) of this section.
 - c. Any other evaluations and verification reviews required by the Department, to determine the adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of subsection 46.13.4.
- (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) Prohibition against filing monitoring and verification reports in more than one participating state. Monitoring and verification reports may only be filed under 46.13.6 for projects that have received consistency determinations under 46.13.3(e)(2). Monitoring and verification reports may not be filed under 46.13.6 for projects that have received consistency determinations in other participating states.
- (e) Department's action on monitoring and verification reports. The Department shall approve or deny a complete monitoring and verification report, in a format approved by the Department, filed with the Department pursuant to 46.13.6(d), within ninety (90) days following receipt of a complete report. A complete monitoring and verification report is one that is in an approved form and is determined by the Department to be complete for the purpose of commencing review of the monitoring and verification report. In no event

shall a completeness determination prevent the Department from requesting additional information in order to enable the Department to approve or deny a monitoring and verification report submitted in a format approved by the Department, and filed under section 46.13.6.

46.14 Duty to Comply

- 46.14.1 Issuance of a permit pursuant to the provisions of this regulation does not relieve the owner/operator from the responsibility to comply fully with any applicable state or federal air pollution control rules or regulations and any other requirements under local, state or federal law.
- 46.14.2 Any conditions included with a permit issued pursuant to this regulation shall have the full force and effect of rules and regulations.
- 46.14.3 Any person who receives a permit shall comply with all conditions included with the permit.
- 46.14.4 Failure to comply with any condition included in a permit issued pursuant to this regulation shall be considered failure to comply with this regulation.

46.15 General Provisions

- 46.15.1 Purpose.

This regulation establishes the Rhode Island component of the CO₂ Budget Trading Program, which is designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from the CO₂ budget sources in an economically efficient manner. The Department 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 regulation. The requirements of this regulation 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 46.8.5(a)(3), CO₂ offset allowances may be used by any CO₂ budget source for compliance purposes.

- 46.15.2 Authority.

These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws 42-35.

46.15.3 Application.

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

46.16 Severability

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

|

46.17 Effective Date

The foregoing regulation, " CO₂ Budget Trading Program", after due notice, is hereby adopted and filed with the Secretary of State this ~~2nd day of July, 2008~~5th day of December, 2013 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 23-23, 42-35, 42-17.1, 42-17.6, of the General Laws of Rhode Island of 1956, as amended.

~~W. Michael Sullivan, PhD~~Janet Coit, Director
Department of Environmental Management

Notice Given on: ~~May 2, 2008~~October 25, 2013

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Filing Date: ~~July 2, 2008~~December 5, 2013

Effective Date: ~~July 22, 2008~~December 25, 2013

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES**

AIR POLLUTION CONTROL REGULATION NO. 47

CO₂ Budget Trading Program Allowance Distribution



Effective: July 22, 2008
Last Amended ~~xxx~~ December 2013

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES

AIR POLLUTION CONTROL REGULATION NO. 47

CO₂ Budget Trading Program Allowance Distribution

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES
AIR POLLUTION CONTROL REGULATION NO. 47
CO₂ Budget Trading Program Allowance Distribution

47.1 Definitions

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in these regulations, the following terms shall, where the context permits, be construed as follows:

- 47.1.1 **“Account”** means the Rhode Island Auction/Sale Account to be established by the Department into which Rhode Island CO₂ allowances shall be allocated.
- 47.1.2 **“Agent”** means an independent contractor, United States Environmental Protection Agency (USEPA), consumer trustee, or other entity including a regional entity.
- 47.1.3 **“Applicant”** means a party submitting a qualification application.
- 47.1.4 **“Application”** means the application that a prospective bidder or buyer must complete to participate in an auction or sale.
- 47.1.5 **“Auction”** means Allowance auction or auction. An auction in which the Department or its agent offers CO₂ allowances for sale, a CO₂ Budget Allowance auction.
- 47.1.6 **“Beneficial Interest”** means profit, benefit, or advantage resulting from the ownership of a CO₂ allowance.
- 47.1.7 **“Central Auction Website”** means a website containing information regarding the CO₂ Budget Trading Program and auctions to be conducted pursuant to this regulation.
- 47.1.8 **“CO₂ Budget Trading Program”** means A multi-state CO₂ air pollution control and emissions reduction program established pursuant to this Regulation and corresponding regulations in other states as a means of reducing emissions of CO₂ from CO₂ budget sources.
~~the program designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in an economically efficient manner.~~

47.1.9 “**Compliance Account**” means a compliance account established under APC Regulation No. 46 – “CO₂ Budget Trading Program”.

~~47.1.10 “**Consumer Price Index (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 Department 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 the previous calendar year.~~

~~47.1.10~~ ~~47.1.11~~ “**Control Period**” means the control period established in APC Regulation No. 46 – “CO₂ Budget Trading Program”.

~~47.1.11 “**CO₂ cost containment reserve allowance**” or “**CO₂ CCR allowance**” means a CO₂ allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO₂ Allowances. CO₂ CCR allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Rhode Island CO₂ Budget Trading Program base and adjusted budgets. CO₂ CCR allowances are subject to all applicable limitations contained in this Part.~~

47.1.12 “**Current Market Price**” means the volume-weighted average of (1) transaction prices reported to the Department or its agent, (2) prices as reported publicly through reputable sources, (3) CO₂ allowance award price(s) from preceding CO₂ Allowance Auction(s), or (4) any combination of these options.

~~47.1.13 “**Current Market Reserve Price (CMRP)**” means the monetary amount calculated to be 80 percent of the Current Market Price.~~

47.1.134 “**Department**” means the Rhode Island Department of Environmental Management.

47.1.145 “**General Account**” means a general account established under APC Regulation No. 46 – “CO₂ Budget Trading Program”.

~~47.1.1615~~ “**Minimum Reserve Price (MRP)**” means The minimum reserve price in calendar year 2014 shall be \$2.00. Each calendar year thereafter, the minimum reserve price shall be 1.025

multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

~~the monetary amount~~ of \$1.86 in 2008 and 2009. Thereafter, the ~~monetary amount,~~ established as of the first day of each calendar year, is derived ~~annually from use of the following formula:~~

$$\text{MRP}(2009+n) = \text{MRP}(2009+(n-1)) \times \left[1 + \frac{\text{CPI}(2009+(n-1)) - \text{CPI}(2009+(n-2))}{\text{CPI}(2009+(n-2))}\right]$$

~~MRP = the minimum reserve price~~

~~MRP(2009) = \$1.86~~

~~n = the number of years since 2009, and~~

~~CPI = the Consumer Price Index.~~

47.1.1~~67~~ **“Participating State”** means a state that has established a corresponding regulation as part of the CO₂ Budget Trading Program.

47.1.1~~78~~ **“Reserve Price”** means the minimum acceptable price for each CO₂ allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in 46.4.3(b).

~~the minimum acceptable price for each CO₂ allowance in a specific auction. The monetary amount is the higher of the MRP or CMRP unless the Department or its agent determines that there is not enough data to justify the calculation of a CMRP, in which case the Reserve Price will be the MRP. The Department or its agent will not be obligated to sell any CO₂ allowances unless the corresponding bid meets or exceeds the reserve price.~~

47.1.1~~89~~ **“Sale”** means a CO₂ Budget Allowance sale.

47.1.1~~920~~ **“Unsold Allowance”** means a CO₂ allowance that has been made available for sale in an auction or sale conducted by the Department or its agent, but not sold.

47.2 Method of Allowance Distribution

- (a) The Department shall determine whether to participate in any of the following or combination thereof:
- (1) a multi-state CO₂ allowance auction in coordination with other participating states,
 - (2) a CO₂ allowance auction separate from other participating states,
- or

- (3) a sale of CO₂ allowances.
- (b) In making such a determination to participate in any of the above, the Department shall consider the following: whether
 - (1) the auction or sale will provide benefits that meet or exceed the purposes of the CO₂ Budget Trading Program,
 - (2) a multi-state auction capability and process is in place for the participating states,
 - (3) the timing of a multi-state auction advances the purposes of the CO₂ Budget Trading Program,
 - (4) the multi-state auction can provide benefits that meet or exceed the purposes of the CO₂ Budget Trading Program, and
 - (5) the multi-state auction process would be consistent with the process described in this regulation.
- (c) Prior to the end of each control period, CO₂ allowances in a quantity equal to the number of CO₂ allowances allocated to the Account for a given control period will be made available for auction or sale. The Department may make CO₂ allowances for future control periods available for auction or sale.

47.3 General Requirements

- (a) The Department shall establish and administer the Account.
- (b) The Department shall convey the allowances from the Account to an agent that shall receive, hold, auction and/or sell allowances in accordance with this regulation and under the oversight of the Department.

47.4 Implementation of CO₂ Allowance Auctions or Sales

- (a) Implementation and administrative support functions for any auction or sale conducted pursuant to this regulation may be delegated by the Department to an agent qualified to conduct auctions or sales, including a regional entity.
- (b) The auctions or sales will be administered in accordance with the purposes of this regulation and APC Regulation No. 46 – “CO₂ Budget Trading Program”.

47.5 Frequency and Quantity of CO₂ Allowances Offered for Auction

- (a) The initial auction shall be conducted at such time and manner as determined by the Department.
- (b) Auctions will be held at least annually and may be held as often as necessary to effectuate the purposes of the CO₂ Budget Trading Program.
- (c) Prior to the auction the Department or its agent shall set a binding reserve price to be accepted for CO₂ allowances in any auction. Such reserve price shall be disclosed to the public or prospective bidders.
- (d) All unsold allowances of an allocation year ~~will may~~ be made available in the succeeding auction of that allowance's allocation year, or control period if its allocation year has ended, ~~in which a reserve price greater than the MRP is in effect. At the end of each control period, the Department may retire any unsold allowances from the concluding control period or offer them in a subsequent auction(s) during the next control period(s) in which a reserve price greater than the MRP is in effect.~~
- ~~(e)~~(e) No bidder or combination of bidders that have related beneficial interest may bid on more than 25% of the allowances available in any given auction.
- (f) The Department or its agent shall make CO₂ allowances available for auction in lot sizes of 1,000 allowances, except where available supply requires a smaller lot size.

47.6 Auction of CO₂ CCR Allowances

- (a) CO₂ CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO₂ allowances available for purchase at the auction, not including any CO₂ CCR allowances.
- (b) If the condition of 47.6(a) is met at an auction, then the number of CO₂ CCR allowances offered for sale by the Department or its agent at the auction shall be equal to the number of CO₂ CCR allowances in the Rhode Island Auction Account at the time of the auction.
- (c) After all of the CO₂ CCR allowances in the Rhode Island Auction Account have been sold in a given calendar year, no additional CO₂ CCR

allowances will be sold at any auction for the remainder of that calendar year, even if the condition of 47.6(a) is met at an auction; and

(d) At an auction in which CO₂ CCR allowances are sold, the reserve price at for the auction shall be the CCR trigger price.

(e) If the condition of 47.6(a) is not satisfied, no CO₂ CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve prices.

47.76 Frequency and Quantity of CO₂ Allowances Offered for Sale

- (a) The initial sale shall be conducted at such time and manner as determined by the Department.
- (b) Sales will be held at least annually and may be held as often as necessary to effectuate the purposes of the CO₂ Budget Trading Program.
- (c) Prior to each sale the Department or its agent shall set a price for allowances to be sold in the sale, which price shall be no lower than the reserve price at the prior multi-state auction.
- (d) Any CO₂ allowances left unsold in any sale may be made available for distribution in a subsequent sale, in quantities and in a manner determined by the Department. At the end of each control period, the Department may retire any unsold allowances from the concluding control period.
- (e) No buyer or combination of buyers that have related beneficial interest may buy more than 25% of the allowances available for sale in any given sale.
- (f) The Department or its agent shall make CO₂ allowances available for sale in lot sizes of 1,000 allowances, except where available supply requires a smaller lot size.

47.87 Participant Eligibility

- (a) Any auction or sale shall be open to all who wish to participate so long as they meet the requirements of section 47.910. However, any applicant that has been found to have violated any rule, regulation, or law associated with any commodity market or exchange may be denied eligibility or precluded from participation in CO₂ Allowance Auctions/Sales.

47.98 Notice of Auction and Sale

47.98.1 Notice of Auction.

- (a) Notice of auctions shall be published on the central auction website or the Department's website, whichever is appropriate, no later than forty five (45) days prior to the date upon which each auction may be conducted. Such Notices may be transmitted electronically to parties requesting such notification.
- (b) Each Notice shall provide a specific description of the auction format, including all auction participation requirements, and shall include, but not be limited to, the following information: the date, time and location and/or electronic address of the auction, the quantity of CO₂ allowances to be auctioned (by allocation year), amount and type of security required, any limits on the amount of CO₂ allowances any one bidder or group of bidders may purchase, the required bid format, information regarding settling and clearing of allowance payments, application instructions, other pertinent rules of the auction, and identification of a contact person for further information.

(c) The number of CO₂ allowances offered for sale at the auction, not including any CO₂ CCR allowances;

(d) The number of CO₂ CCR allowances that will be offered for sale at the auction if the condition of 47.6(a) is met;

(e) The minimum reserve price for the auction; and

(f) The CCR trigger price for the auction.

47.89.2 Notice of Sale.

- (a) Notice of sales shall be published on the Department's website no later than forty five (45) days prior to the date upon which each sale may be conducted. Such Notices may be transmitted electronically to parties requesting such notification.
- (b) Each Notice will provide a specific description of the sale format, including all sale participation requirements, and shall include but

not be limited to the following information: the date, time and location and/or electronic address of the sale, the quantity of CO₂ allowances to be offered for sale (by allocation year), amount and type of security required, the price of the CO₂ allowances, any limits on the amount of CO₂ allowances any one buyer or group of buyers may purchase, application instructions, other pertinent rules of the sale, and identification of a contact person for further information.

47.109 Participation Requirements

- (a) In order to participate in an auction or sale, any prospective bidder or buyer must provide financial security in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the Department. Financial security shall be provided in a form and manner as described in the Notice. A prospective bidder's eligibility to bid in any auction or a buyer's eligibility to buy allowances shall be limited to the level of financial security provided. Financial security may be forfeited to and retained by the Department or its agent in the event the bidder's offer is accepted in a CO₂ allowance auction and the bidder fails to tender payment of the full amount when due.
- (b) Bidders or buyers may request return of their financial security at any time prior to or following any CO₂ allowance auction or sale, and the Department or its agent shall return said financial security provided that the Department or its agent have no current or pending claim to such security as a result of a successful bid or sale, or failure of a bidder or buyer to pay the full amount of its accepted bid when due.
- (c) Any party wishing to participate in an auction or sale shall be required to:
 - (1) Open and maintain a compliance account or a general account, and
 - (2) Complete an application. Prospective bidders and buyers must provide information and documentation relating to their ability and authority to execute bids and sales and honor contractual obligations. Such documentation may include, but may not be limited to, information and documentation regarding the corporate identity, ownership and capital structure of the applicant.

- (d) Applicants wishing to participate in an auction or sale shall submit an application in the form provided in the Notice to the Department or its agent on or before the deadline specified in the Notice. Such deadline shall be no sooner than fifteen (15) days following the date of publication of the Notice. Application information and forms shall be made available electronically on the central website or the Departments website, whichever is appropriate.
- (e) The Department or its agent will review each application and make a determination as to whether an applicant is deemed qualified. Failure to provide any information required by the Notice or this regulation may result in the application being denied.
- (f) Prospective bidders and buyers that qualify for participation under this subsection will be qualified for all subsequent CO₂ allowance auctions and sales, and will be eligible to bid in such auctions or buy in a sale provided that such party has complied with the financial security requirements of this subsection.
- (g) Prior to each CO₂ allowance auction or sale a prospective bidder or buyer that has qualified under this subsection must notify the Department of its intent to participate in the upcoming auction or sale. This notification shall include either a statement that there has been no material change to the information provided in the application, or a revised application if material changes have occurred. A material change is a substantial change of decisional significance.
- (h) The Department may suspend or revoke its approval of an application if the bidder or buyer fails to comply with requirements of this regulation and APC Regulation No. 46 – “CO₂ Budget Trading Program”.
- (i) All bids shall be submitted in a form prescribed by the Department or its agent, and shall be submitted in the manner prescribed by the Department or its agent. Such forms shall be made available electronically on the central auction website or the Department’s website, whichever is appropriate based on the Departments determination under section 47.2. All bids submitted shall be considered binding offers for the purchase of allowances under the rules of the auction.
- (j) All sales shall be submitted in a form prescribed by the Department or its agent, and shall be submitted in the manner prescribed by the Department or its agent. Such forms shall be made available electronically on the Department’s website. All sales shall be considered binding for the purchase of allowances under the rules of the sale.

- (k) If the Department or its agent determines that a bidder or buyer has provided false or misleading information, or has withheld pertinent information in its application, or has otherwise failed to comply with this regulation, the bidder or buyer may be prohibited from participating in any future auctions or sales.

47.1~~10~~ Auction or Sale Format

- (a) The auction or sale format shall be announced in the Notice prior to the auction or sale.
- (b) Sale Criteria.

If the quantity of allowances available for purchase in a particular sale is less than the quantity of allowances sale participants want to buy, then the quantity of allowances made available to each prospective buyer shall be determined by a random process.

- (c) No allowances shall be sold at any auction for a price below the reserve price for that auction; and
- (d) If the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

47.1~~21~~ Transfer of CO₂ Allowances

After the Department's approval of the results of an auction or sale and upon receipt by the Department or its agent of payments from successful bidders or buyers, the Department shall transfer CO₂ allowances to the purchaser's compliance account or general account.

47.1~~32~~ Publication of Results

The Department or its agent will publish on the central auction website or the Department's website, whichever is appropriate, the auction clearing price and the number of allowances sold in the auction.

47.1~~43~~ General Provisions

- 47.1~~43~~.1 Purpose.

This regulation establishes rules for administration of the distribution of CO₂ allowances as part of Rhode Island's

component of the CO₂ Budget Trading Program. The CO₂ Budget Trading Program is designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources. The distribution of allowances is to be managed in an economically efficient manner that maximizes Rhode Island's contribution to lowering carbon emissions while minimizing impacts on electric system reliability and costs to Rhode Island power consumers over the long term. This regulation complements the provisions of APC Regulation No. 46 – “CO₂ Budget Trading Program”.

47.1~~43~~.2 Authority.

These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

47.1~~43~~.3 Application.

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

47.1~~54~~ Severability

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

47.1~~65~~ Effective Date

The foregoing regulation, " CO₂ Budget Trading Program Allowance Distribution", after due notice, is hereby adopted and filed with the Secretary of State this ~~2nd day of July, 2008~~^{5th day of December, 2013} to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 23-23,

42-35, 42-17.1, 42-17.6, of the General Laws of Rhode Island of 1956, as amended.

~~W. Michael Sullivan, PhD~~Janet Coit, Director
Department of Environmental Management

Notice Given on: ~~May 2, 2008~~October 25, 2013

Public Hearing held: ~~June 5, 2008~~October 25, 2013

Filing Date: ~~July 2, 2008~~December 5, 2013

Effective Date: ~~July 22, 2008~~December 25, 2013



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-831-5508

Date: 10 October 2013

To: Nancy Scarduzio, Small Business Ombudsman
Office of Regulatory Reform

Kelly Mahoney
Governor's Office

From: Douglas L. McVay, Chief
Office of Air Resources
Department of Environmental Management

RE: Small Business Impact Statement & Regulatory Flexibility Analysis for proposed Amendments to Air Pollution Control Regulations No. 46 "CO₂ Budget Trading Program" and Air Pollution Control Regulations No. 47 "CO₂ Budget Trading Program Allowance Distribution"

Reason for the Rulemaking

The Regional Greenhouse Gas Initiative (RGGI) is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. Each participating state's CO₂ Budget Trading Program is based on the 2008 RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have completed a 2012 Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, imports and emissions leakage, and offsets.

Amendments to the Model Rule were developed by the RGGI state staff as part of the Program Review. This effort was supported by an extensive regional stakeholder process that engaged the regulated community, environmental non-profits, and other organizations with technical expertise in the design of cap-and-trade programs.

As a result of the program review process described above, The Department of Environmental Management proposes to amend the Rhode Island CO₂ Budget Trading Program Regulations to incorporate the changes made in the RGGI Model Rule.

The regulated entities under these regulations are electric generating utilities and therefore are not considered small businesses under §42-35.1-3(c) of the Rhode Island General Laws.

The Small Business Impact Statements and Regulatory Flexibility Analyses are identical to those previously provided to the Office of Regulatory Reform in December of 2012.

**SMALL BUSINESS IMPACT STATEMENT FOR PROPOSED REGULATION
AMENDMENTS
APC Regulations No. 46 and 47**

APC Regulation No. 46

SMALL BUSINESS IMPACT STATEMENT

Agency submitting regulation:

DEM

Subject matter of regulation:

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

ERLID No:

5195

Statutory authority:

These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended.

Other agencies affected:

Office of Energy Resources.

Other regulations that may duplicate or conflict with the regulation:

None

Describe the scope and objectives of the regulation:

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

What was the rationale for establishing this regulation?

To reduce greenhouse gas emissions.

Does the rationale still exist?

Yes.

Is the rationale still relevant?

Yes.

Business industry (s) affected by the regulation:

Electric generating utilities.

Types of businesses included in the industry (s):

Electric generating utilities.

Total number of small businesses included in the regulated industry (s) *(Please see the attached guidance documents for assistance determining the total number of small businesses)*

None.

Number of small businesses potentially subject to the proposed regulation:

None.

How often do small businesses contact your agency for assistance with clarification of the regulation and/or receive assistance with compliance issues?

Never.

What is the cost to your agency of establishing and enforcing this regulation?

1/3 of FTE

What would the consequences be if the regulation did not exist?

Regional increase in greenhouse gas emissions. Decrease in funding for energy efficiency projects.

Effective date used in cost estimate:

December 2012.

For each question below, please answer “yes” or “no” and offer a brief explanation.

Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.

1.		No	Do small businesses have to create, file, or issue additional reports? No small businesses are regulated under this program.
2.		No	Do small businesses have to implement additional recordkeeping procedures?
3.		No	Do small businesses have to provide additional administrative oversight?
4.		No	Do small businesses have to hire additional employees in order to comply with the proposed regulation?
5.		No	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
6.		No	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?

7.		No	Are performance standards more appropriate than design standards?
8.		No	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
9.		No	Does the regulation have the effect of creating additional taxes and/or fees for small businesses?
10.		No	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
11.		No	Is the regulation likely to <i>deter</i> the formation of small businesses in RI?
12.		No	Is the regulation likely to <i>encourage</i> the formation of small businesses in RI?
13.		No	Can the regulation provide for less stringent compliance or reporting requirements for small businesses?

14.		No	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
15.		No	Can the compliance or reporting requirements be consolidated or simplified for small businesses?
16.		No	Can performance standards for small businesses replace design or operational standards?
17.		No	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?
18.		No	Have any small businesses or small business organizations been contacted during the preparation of this document? If so, please describe.

APC Regulation No. 47

SMALL BUSINESS IMPACT STATEMENT

Agency submitting regulation:

DEM

Subject matter of regulation:

This regulation establishes rules for administration of the distribution of CO₂ allowances as part of Rhode Island's component of the CO₂ Budget Trading Program. The CO₂ Budget Trading Program is designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources. This regulation complements the provisions of APC Regulation No. 46 – “CO₂ Budget Trading Program”.

ERLID No:

5196

Statutory authority:

These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended.

Other agencies affected:

Office of Energy Resources.

Other regulations that may duplicate or conflict with the regulation:

None.

Describe the scope and objectives of the regulation:

This regulation establishes rules for administration of the distribution of CO₂ allowances as part of Rhode Island's component of the CO₂ Budget Trading Program. The CO₂ Budget Trading Program is designed to stabilize and then reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources. This regulation complements the provisions of APC Regulation No. 46 – “CO₂ Budget Trading Program”.

What was the rationale for establishing this regulation?

Direct method to reduce greenhouse gas emissions.

Does the rationale still exist?

Yes

Is the rationale still relevant?

Yes

Business industry (s) affected by the regulation:

Electricity generating facilities.

Types of businesses included in the industry (s):

Electricity generating facilities.

Total number of small businesses included in the regulated industry (s) (Please see the attached guidance documents for assistance determining the total number of small businesses)

None.

Number of small businesses potentially subject to the proposed regulation:

None.

How often do small businesses contact your agency for assistance with clarification of the regulation and/or receive assistance with compliance issues?

Never.

What is the cost to your agency of establishing and enforcing this regulation?

0.1 FTE

What would the consequences be if the regulation did not exist?

Increase in regional greenhouse gas emissions. Reduction in funding for energy efficiency projects.

Effective date used in cost estimate:

December 2012

For each question below, please answer “yes” or “no” and offer a brief explanation.

Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.

1.		No	Do small businesses have to create, file, or issue additional reports? Small businesses not regulated. Utilities are not considered small businesses.
2.		No	Do small businesses have to implement additional recordkeeping procedures?
3.		No	Do small businesses have to provide additional administrative oversight?
4.		No	Do small businesses have to hire additional employees in order to comply with the proposed regulation?
5.		No	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
6.		No	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?

7.		No	Are performance standards more appropriate than design standards?
8.		No	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
9.		No	Does the regulation have the effect of creating additional taxes and/or fees for small businesses?
10.		No	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
11.		No	Is the regulation likely to <i>deter</i> the formation of small businesses in RI?
12.		No	Is the regulation likely to <i>encourage</i> the formation of small businesses in RI?
13.		No	Can the regulation provide for less stringent compliance or reporting requirements for small businesses?

14.		No	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
15.		No	Can the compliance or reporting requirements be consolidated or simplified for small businesses?
16.		No	Can performance standards for small businesses replace design or operational standards?
17.		No	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?
18.		No	Have any small businesses or small business organizations been contacted during the preparation of this document? If so, please describe.

**Regulatory Flexibility Analysis for Proposed Regulation Amendments
Air Pollution Control Regulations Nos. 46 and 47**

- 1. The establishment of less stringent compliance or reporting requirements for small businesses.**

No requirements are proposed for small businesses.

- 2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.**

No requirements are proposed for small businesses.

- 3. The consolidation or simplification of compliance or reporting requirements for small businesses.**

No requirements are proposed for small businesses.

- 4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation.**

No requirements are proposed for small businesses.

- 5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.**

No requirements are proposed for small businesses.

A public notice regarding the proposed regulation revisions is scheduled to be released 25 October 2013.



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-831-5508

Date: 10 October 2013

To: Sharon Savicki
Budget Office
Department of Administration

From: Douglas L. McVay, Chief
Office of Air Resources
Department of Environmental Management

RE: Fiscal Note for proposed amendments to Air Pollution Control Regulations No. 46 "CO₂ Budget Trading Program" and Air Pollution Control Regulations No. 47 "CO₂ Budget Trading Program Allowance Distribution"

Description of the proposed rule changes

The Regional Greenhouse Gas Initiative (RGGI) is composed of individual CO₂ Budget Trading Programs in each RGGI participating state. Each participating state's CO₂ Budget Trading Program is based on the 2008 RGGI Model Rule, which was developed to provide guidance to states as they implemented the RGGI program. RGGI participating states have completed a 2012 Program Review, which is a comprehensive evaluation of program successes, program impacts, the potential for additional reductions, imports and emissions leakage, and offsets.

Amendments to the Model Rule were developed by the RGGI state staff as part of the 2012 Program Review. This effort was supported by an extensive regional stakeholder process that engaged the regulated community, environmental non-profits, and other organizations with technical expertise in the design of cap-and-trade programs.

As a result of the program review process described above, The Department of Environmental Management proposes to amend the Rhode Island CO₂ Budget Trading Program Regulations to incorporate the changes made in the RGGI Model Rule.

This regulation would not result in a "state mandate" under RIGL section 45-13-7 because local government will not be required to "...establish, expand or modify its activities in a way as to necessitate additional expenditures from local revenue sources."

Economic impact on the state or any city/ town

The proposed changes to these regulations will have no adverse economic impact on cities or towns because these regulations only apply to electricity generating facilities in the state.

Conclusion

As indicated above, it is DEM's position that promulgation of these amendments to the existing regulations will not fiscally impact the state or any city or town. We plan to release the public notice for these regulation changes on 25 October 2013.

Feel free to contact me with any questions or for more information. I can be reached by phone at 222-2808, x-7011 or by e-mail at doug.mcvay@dem.ri.gov. Please direct all correspondence concerning this Fiscal Note to me.

Attachments: Proposed Amendments to Air Pollution Control Regulation No. 46 “CO₂ Budget Trading Program” and Air Pollution Control Regulations No. 47 “CO₂ Budget Trading Program Allowance Distribution”