

Vermont CO₂ Budget Trading Program

Table of Contents

SUBCHAPTER I. CO₂ BUDGET TRADING PROGRAM GENERAL PROVISIONS	4
23-101 Purpose.	4
23-102 Definitions.	4
23-103 Measurements, abbreviations and acronyms.	16
23-104 Applicability.	16
23-105 Standard requirements.	16
23-106 Computation of time.	21
23-107 Severability.	21
SUBCHAPTER II. CO₂ AUTHORIZED ACCOUNT REPRESENTATIVE FOR CO₂ BUDGET SOURCES	21
23-201 Authorization and responsibilities of the CO ₂ authorized account representative.	21
23-202 CO ₂ authorized alternate account representative.	23
23-203 Changing the CO ₂ authorized account representative and the CO ₂ authorized alternate account representative; changes in the owners and operators.	23
23-204 Account certificate of representation.	25
23-205 Objections concerning the CO ₂ authorized account representative.	26
23-206 Delegation by CO ₂ authorized account representative and CO ₂ authorized alternate account representative.	26
SUBCHAPTER III. PERMITS	30
23-301 CO ₂ budget permit requirements.	30
23-302 Submission of CO ₂ budget permit applications.	30
23-303 Information requirements for CO ₂ budget permit applications.	30
SUBCHAPTER IV. COMPLIANCE CERTIFICATION	31
23-401 Compliance certification report.	31

23-402	Agency's action on compliance certifications.	32
SUBCHAPTER V. CO₂ ALLOWANCE ALLOCATIONS		33
23-501	State of Vermont CO ₂ trading program base budget.	33
23-502	RESERVED	34
23-503	CO ₂ allowance allocations.	34
SUBCHAPTER VI. CO₂ ALLOWANCE TRACKING SYSTEM (COATS)		35
23-601	CO ₂ Allowance Tracking System (COATS) accounts.	35
23-602	Establishment of accounts.	35
23-603	CO ₂ Allowance Tracking System (COATS) responsibilities of CO ₂ authorized account representative.	43
23-604	Recordation of CO ₂ allowance allocations.	43
23-605	Compliance.	43
23-606	Banking.	48
23-607	Account error.	48
23-608	Closing of general accounts.	48
SUBCHAPTER VII. CO₂ ALLOWANCE TRANSFERS		49
23-701	Submission of CO ₂ allowance transfers.	49
23-702	Recordation.	49
23-703	Notification.	50
SUBCHAPTER VIII. MONITORING, REPORTING AND RECORDKEEPING		51
23-801	General requirements.	51
23-802	RESERVED.	51
23-803	RESERVED.	51
23-804	RESERVED.	51
23-805	Recordkeeping and reporting.	52
23-806	Petitions.	54

23-807	RESERVED.	55
23-808	Additional requirements to provide output data.	55
SUBCHAPTER IX.	RESERVED	60

Subchapter I. CO₂ Budget Trading Program General Provisions

23-101 Purpose.

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

23-102 Definitions.

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

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

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

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

(4) *Agency.* Agency means the Vermont Agency of Natural Resources.

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

(6) *Allocation year.* A calendar year for which the Agency allocates CO₂ allowances pursuant to Subchapter V. The allocation year of each CO₂ allowance is reflected in the unique identification number given to the allowance pursuant to subsection 23-604(b).

(7) *Allowance auction or auction.* An auction in which the Vermont Public

Utility Commission or its agent offers CO₂ allowances for sale.

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

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

(10) *Automated data acquisition and handling system or DAHS*. That component of the continuous emissions monitoring system, or other emissions monitoring system approved for use under Subchapter VIII, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Subchapter VIII.

(11) *Billing meter*. A measurement device used to measure electric or thermal output for commercial billing under a contract. The owners of the facility selling the electric or thermal output must be different from the owners of the party purchasing the electric or thermal output.

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

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

(14) *CO₂ allowance deduction or deduct CO₂ allowances*. The permanent withdrawal of CO₂ allowances by the Agency or its agent from a CO₂

Allowance Tracking System (COATS) 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 Subchapter VIII, or for the forfeit or retirement of CO₂ allowances as provided by this Chapter.

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

(16) *CO₂ Allowance Tracking System (COATS).* The system by which the Agency or its agent records allocations, deductions, and transfers of CO₂ allowances under the CO₂ Budget Trading Program. The tracking system may also be used to track CO₂ allowance prices and emissions from affected sources.

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

(18) *CO₂ allowance transfer deadline.* 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 requirements of 23-105(c) for a control period or interim control period. Deadlines are at midnight of the March 1 occurring after the end of the relevant control period or interim control period. If the relevant March 1 is not a business day, the deadline is midnight of the first business day thereafter.

(19) *CO₂ authorized account representative.* For a CO₂ budget source and each CO₂ budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO₂ budget units at the source, in accordance with Subchapter II, to represent and legally bind each

owner and operator in matters pertaining to the CO₂ Budget Trading Program or, for a general account, the natural person who is authorized, under Subchapter VI, to transfer or otherwise dispose of CO₂ allowances held in the general account.

(20) *CO₂ budget emissions limitation*. 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 source for a control period or twice the CO₂ allowances available for an interim control period.

(21) *CO₂ budget permit*. The portion of the legally binding permit issued by the Agency pursuant to the State of Vermont's Air Pollution Control Regulations to a CO₂ budget source or CO₂ budget unit which specifies the CO₂ Budget Trading Program requirements applicable to the CO₂ budget source, or CO₂ budget unit, and to the owners and operators and the CO₂ authorized account representative of the CO₂ budget source or CO₂ budget unit.

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

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

(24) *CO₂ budget unit*. A unit that is subject to the CO₂ Budget Trading Program requirements under section 23-104.

(25) *CO₂ cost containment reserve tier 1 allowance or CO₂ CCR tier 1 allowance*. A CO₂ allowance that is offered for sale at an auction by the Vermont Public Utility Commission for the purpose of containing the cost of CO₂ allowances. CO₂ CCR tier 1 allowances offered for sale at an auction

are separate from and additional to CO₂ allowances allocated from the State of Vermont Budget Trading Program budgets. CO₂ CCR tier 1 allowances are subject to all applicable limitations contained in this Chapter.

(26) *CO₂ cost containment reserve tier 2 allowance or CO₂ CCR tier 2 allowance.* A CO₂ allowance that is offered for sale at an auction by the Vermont Public Utility Commission for the purpose of containing the cost of CO₂ allowances. CO₂ CCR tier 2 allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the State of Vermont CO₂ Budget Trading Program budgets. CO₂ CCR tier 2 allowances are subject to all applicable limitations contained in this Chapter.

(27) *CO₂ emissions offset project.* A historical project that allowed the Agency to determine how many CO₂ Offset Allowances to record in a sponsor's general account related specific emission reductions outside of the electricity sector. CO₂ offset allowances recorded before January 1, 2027, are eligible to meet the compliance deduction as limited under section 23-605(a)(3).

(28) *CO₂ offset allowance.* A CO₂ allowance that is determined by the Agency to have been recorded, by a participating state prior to January 1, 2027, in the general account of the sponsor of a CO₂ emissions offset project and is subject to the relevant compliance deduction limitations of section 23-605(a)(3).

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

(30) *Combustion turbine.* An enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(31) *Commence commercial operation.* With regard to a unit that serves a generator, to begin 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 23-104 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO₂ budget unit under section 23-104 on the date the unit commences commercial operation, the date the unit becomes a CO₂ budget unit under section 23-104 shall be the unit's date of commencement of commercial operation.

(32) *Commence operation.* To begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO₂ budget unit under section 23-104 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO₂ budget unit under section 23-104 on the date of commencement of operation, the date the unit becomes a CO₂ budget unit under section 23-104 shall be the unit's date of commencement of operation.

(33) *Compliance account.* A CO₂ Allowance Tracking System (COATS) account, established by the Agency or its agent for a CO₂ budget source under Subchapter VI, in which are held CO₂ allowances available for use by the source for a control period or interim control period for the purpose of meeting the CO₂ requirements of 23-105(c).

(34) *Consumer benefit or strategic energy purpose account.* A general account managed by one or more consumer trustees appointed by the Public Utility Commission to receive, hold, bank, and sell CO₂ allowances in order to provide the maximum long-term benefit to Vermont electric consumers, particularly benefits that will result from accelerated and sustained investments in energy efficiency and other low-cost, low-carbon power system investments and, to the extent feasible, accomplish the goals set forth in 30 V.S.A. § 255(c)(2).

(35) *Continuous emissions monitoring system or CEMS.* The equipment required under Subchapter VIII to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75 and Subchapter VIII of this regulation.

(36) *Control period.* The control period is a three-calendar-year time period. The first control period is from January 1, 2009 through December 31, 2011 inclusive. Each subsequent three-calendar-year period is a separate control period. The first two calendar years of each control period are each defined as an interim control period, beginning on January 1, 2015.

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

(38) *Excess interim emissions.* Any tonnage of CO₂ emitted by a CO₂ budget source during an interim control period that when multiplied by 0.50 exceeds the CO₂ budget emissions limitation for the source.

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

(40) *Fossil fuel-fired.*

(1) 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.

(2) With regard to a unit that commenced or commences 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.

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

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

(43) *Interim control period.* An interim control period is 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.

(44) *Life-of-the-unit contractual arrangement.* A unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity

and/or associated energy from any specified unit pursuant to a contract:

- (i) for the life of the unit;
- (ii) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (iii) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

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

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

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

(48) *Net electric output.* The amount of gross generation that generator(s)

produce (including, but not limited to, output from steam turbine(s), combustion turbine(s), and gas expander(s)), as measured at the generator terminals, less the electricity used to operate the plant (i.e. auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformers losses as measured at the transmission side of the step-up transformer (e.g., the point of sale).

(49) *Non-CO₂ budget unit*. A unit that does not meet the applicability criteria of section 23-104.

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

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

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

(ii) 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

(iii) 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

(iv) 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.

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

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

(54) *Recordation, record, or recorded*. With regard to CO₂ allowances, the movement of CO₂ allowances by the Agency or its agent from one CO₂ Allowance Tracking System (COATS) account to another for purposes of allocation, transfer or deduction.

(55) *Serial number*. When referring to CO₂ allowances, the unique identification number assigned to each CO₂ allowance by the Agency or its agent under section 23-604(b).

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

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

(58) *State of Vermont CO₂ Budget Trading Program Base Budget*. The State of Vermont CO₂ Budget Trading Program base budget is specified in section 23-501. CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the State of Vermont CO₂ Budget Trading Program Base

Budget.

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

- (i) in person;
- (ii) by United States Postal Service; or
- (iii) by other means of dispatch or transmission and delivery.

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

(60) *Ton or tonnage.* Any “short ton”, or 2,000 pounds. For the purpose of determining compliance with the CO₂ requirements of 23-105(c), 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 Subchapter VIII, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.

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

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

23-103 Measurements, abbreviations and acronyms.

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

CO₂: carbon dioxide

Hr: hour

Lb: pounds

MW: megawatt

MWe-megawatt electrical

MWh: megawatt-hour

23-104 Applicability.

Units. Any unit that, at any time on or after January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO₂ budget unit, and any source that includes one or more such units shall be a CO₂ budget source, subject to the requirements of this Chapter.

23-105 Standard requirements.

(a) *Permit requirements.*

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

- (i) submit to the Agency a complete CO₂ budget permit application under section 23-303 in accordance with the deadlines specified in section 23-302; and
- (ii) submit in a timely manner any supplemental information that the

Agency determines is necessary in order to review the CO₂ budget permit application and issue or deny a CO₂ budget permit.

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

(b) *Monitoring requirements.*

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

(2) The emissions measurements recorded and reported in accordance with Subchapter VIII shall be used to determine compliance by the unit with the CO₂ requirements of subsection 23-105(c).

(c) *CO₂ requirements.*

(1) The owners and operators of each CO₂ budget source and each CO₂ budget unit at the source shall hold CO₂ allowances available for compliance deductions under section 23-605, as of the CO₂ allowance transfer deadline, in the source's compliance account in an amount not less than the total number of tons of CO₂ emissions for the control period from all CO₂ budget units at the source, less the CO₂ allowances deducted to meet the requirements of subdivision 23-105(c)(2), with respect to the previous two interim control periods, as determined in accordance with Subchapters VI and VIII.

(2) 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 23-605, as of the CO₂ allowance transfer deadline, in the source's compliance account in an amount not less than 0.50 times the total number of tons of CO₂ emissions for the interim control period from all CO₂ budget units at the source, as determined in accordance with Subchapters VI and VIII.

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

(4) Each ton of excess interim emissions shall constitute a separate violation of this Part and applicable state law.

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

(6) CO₂ allowances shall be held in, deducted from, or transferred among CO₂ Allowance Tracking System (COATS) accounts in accordance with Subchapters V, VI, and VII.

(7) A CO₂ allowance shall not be deducted, in order to comply with the requirements under subdivision (c)(1) or (2) of this section, 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 subdivision (c)(1) or (2) of this section, beyond the applicable percent limitations set out in subdivision 23-605(a)(3).

(8) A CO₂ allowance under the CO₂ Budget Trading Program is a limited authorization by the Agency or a participating state to emit one ton of CO₂ in accordance with the CO₂ Budget Trading Program. No provision of the CO₂ Budget Trading Program, the CO₂ budget permit application, or the CO₂

budget permit or any provision of law shall be construed to limit the authority of the Agency or a participating state to terminate or limit such authorization.

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

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

(1) forfeit the CO₂ allowances required for deduction under subdivision 23-605(d)(1), provided CO₂ offset allowances may not be used to cover any part of such excess emissions; and

(2) pay any fine, penalty, or assessment or comply with any other remedy imposed under subdivision 23-605(d)(2).

(e) *Recordkeeping and reporting requirements.*

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

(i) The account certificate of representation for the CO₂ authorized account representative for the source and each CO₂ budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 23-204, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation changing the CO₂ authorized account representative.

(ii) All emissions monitoring information, in accordance with

Subchapter VIII and 40 CFR 75.57.

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

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

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

(f) *Liability.*

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

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

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

(g) *Effect on other authorities.* No provision of the CO₂ Budget Trading Program, a CO₂ budget permit application, or a CO₂ budget permit, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the

CO₂ authorized account representative of a CO₂ budget source or CO₂ budget unit from compliance with any other provisions of applicable State and federal laws and regulations.

23-106 Computation of time.

(a) Unless otherwise stated, any time period scheduled under the CO₂ Budget Trading Program to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled under the CO₂ Budget Trading Program to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

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

23-107 Severability.

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

Subchapter II. CO₂ Authorized Account Representative for CO₂ Budget Sources

23-201 Authorization and responsibilities of the CO₂ authorized account representative.

(a) Except as provided under section 23-202, each CO₂ budget source, including all CO₂ budget units at the source, shall have one and only one CO₂ authorized account representative, with regard to all matters under the CO₂ Budget Trading Program concerning the source or any CO₂ budget unit at the source.

(b) The CO₂ authorized account representative of the CO₂ budget source shall be

selected by an agreement binding on the owners and operators of the source and all CO₂ budget units at the source and must act in accordance with the certificate of representation under section 23-204.

(c) Upon receipt by the Agency or its agent of a complete account certificate of representation under section 23-204, the CO₂ authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CO₂ budget source represented and each CO₂ budget unit at the source in all matters pertaining to the CO₂ Budget Trading Program, notwithstanding any agreement between the CO₂ authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO₂ authorized account representative by the Agency or a court regarding the source or unit.

(d) No CO₂ budget permit shall be issued, and no CO₂ Allowance Tracking System (COATS) account shall be established for a CO₂ budget source, until the Agency or its agent has received a complete account certificate of representation under section 23-204 for a CO₂ authorized account representative of the source and the CO₂ budget units at the source.

(e) Each submission under the CO₂ Budget Trading Program shall be submitted, signed, and certified by the CO₂ authorized account representative for each CO₂ budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO₂ authorized account representative:

“I am authorized to make this submission on behalf of the owners and operators of the CO₂ budget sources or CO₂ budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are

significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

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

23-202 CO₂ authorized alternate account representative.

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

(b) Upon receipt by the Agency or its agent of a complete account certificate of representation under section 23-204, any representation, action, inaction, or submission by the CO₂ authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO₂ authorized account representative.

(c) Except in this section and subsection 23-201(a), section 23-203, section 23-204, and section 23-602, whenever the term “CO₂ authorized account representative” is used in this Chapter, the term shall be construed to include the CO₂ authorized alternate account representative.

23-203 Changing the CO₂ authorized account representative and the CO₂ authorized alternate account representative; changes in the owners and operators.

(a) *Changing the CO₂ authorized account representative.* The CO₂ authorized account representative may be changed at any time upon receipt by the Agency or its agent of a superseding complete account certificate of representation under section 23-204. Notwithstanding any such change, all representations, actions,

inactions, and submissions by the previous CO₂ authorized account representative or CO₂ authorized alternate account representative prior to the time and date when the Agency or its agent receives the superseding account certificate of representation shall be binding on the new CO₂ authorized account representative and the owners and operators of the CO₂ budget source and the CO₂ budget units at the source.

(b) *Changing the CO₂ authorized alternate account representative.* The CO₂ authorized alternate account representative may be changed at any time upon receipt by the Agency or its agent of a superseding complete account certificate of representation under section 23-204. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO₂ authorized account representative or CO₂ authorized alternate account representative prior to the time and date when the Agency or its agent receives the superseding account certificate of representation shall be binding on the new CO₂ authorized alternate account representative and the owners and operators of the CO₂ budget source and the CO₂ budget units at the source.

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

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

(2) Within 30 days following any change in the owners and operators of a CO₂ budget source or a CO₂ budget unit, including the addition of a new owner or operator, the CO₂ authorized account representative or CO₂ authorized

alternate account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

23-204 Account certificate of representation.

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

- (1) Identification of the CO₂ budget source and each CO₂ budget unit at the source for which the account certificate of representation is submitted;
- (2) the name, address, e-mail address, telephone number, and facsimile transmission number of the CO₂ authorized account representative and any CO₂ authorized alternate account representative;
- (3) a list of the owners and operators of the CO₂ budget source and of each CO₂ budget unit at the source;
- (4) the following certification statement by the CO₂ authorized account representative and any CO₂ authorized alternate account representative:

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

- (5) the signature of the CO₂ authorized account representative and any

CO₂ authorized alternate account representative and the dates signed.

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

23-205 Objections concerning the CO₂ authorized account representative.

(a) Once a complete account certificate of representation under section 23-204 has been submitted and received, the Agency and its agent will rely on the account certificate of representation unless and until the Agency or its agent receives a superseding complete account certificate of representation under section 23-204.

(b) Except as provided in subsection 23-203(a) or (b), no objection or other communication submitted to the Agency or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO₂ authorized account representative shall affect any representation, action, inaction, or submission of the CO₂ authorized account representative or the finality of any decision or order by the Agency or its agent under the CO₂ Budget Trading Program.

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

23-206 Delegation by CO₂ authorized account representative and CO₂ authorized alternate account representative.

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

(b) A CO₂ authorized alternate account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the

Agency or its agent under this Chapter.

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

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

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

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

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

“I agree that any electronic submission to the Agency or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made while I am a CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection 23-206(d) shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under subsection 23-206(d), I agree to maintain an e-mail account and to notify the Agency or its agent immediately of any change in my e-mail address unless all delegation authority by me under section 23-206 is terminated.”

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

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

(f) A CO₂ authorized account representative may delegate, to one or more natural persons, his or her authority to review information in the CO₂ Allowance Tracking System (COATS) under this part.

(g) A CO₂ authorized alternate account representative may delegate, to one or more natural persons, his or her authority to review information in the CO₂ Allowance Tracking System (COATS) under this part.

(h) In order to delegate authority to review information in the CO₂ Allowance Tracking System (COATS) in accordance with subdivision (f) and (g) of this section, the CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, must submit to the Agency or its agent a notice of delegation, in a format prescribed by the Agency that includes the following elements:

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

authorized alternate account representative;

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

(3) For each such natural person, a list of the type of information under subdivision (f) or (g) of this section for which reviewing authority is delegated to him or her; and

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

“I agree that any information that is reviewed by a natural person identified in this notice of delegation and of a type listed for such information accessible by the reviewer in this notice of delegation and that is made when I am a CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection 23-206(i) shall be deemed to be a review by me. Until this notice of delegation is superseded by another notice of delegation under subsection 23-206(i), I agree to maintain an e-mail account and to notify the Agency or its agent immediately of any change in my e-mail address unless all delegation authority by me under section 23-206 is terminated.”

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

Subchapter III. Permits

23-301 CO₂ budget permit requirements.

- (a) Each CO₂ budget source must have a permit issued by the Agency pursuant to the State of Vermont's Air Pollution Control Regulations.
- (b) Each CO₂ budget permit shall contain all applicable CO₂ Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subsection (a) of this section.

23-302 Submission of CO₂ budget permit applications.

For any CO₂ budget source, the CO₂ authorized account representative shall submit a complete CO₂ budget permit application under section 23-303 covering such CO₂ budget source to the Agency by the later of January 1, 2009 or 12 months before the date on which the CO₂ budget source, or a new unit at the source, commences operation.

23-303 Information requirements for CO₂ budget permit applications.

- (a) A complete CO₂ budget permit application shall include the following elements concerning the CO₂ budget source for which the application is submitted, in a format prescribed by the Agency:
 - (1) Identification of the CO₂ budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable;
 - (2) identification of each CO₂ budget unit at the CO₂ budget source; and
 - (3) the standard requirements under section 23-105.

Subchapter IV. Compliance Certification

23-401 Compliance certification report.

- (a) *Applicability and deadline.* For each control period in which a CO₂ budget source is subject to the CO₂ requirements of 23-105(c), the CO₂ authorized account representative of the source shall submit to the Agency by the March 1 following the relevant control period, a compliance certification report. 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 subsection (a) of this section the following elements, in a format prescribed by the Agency:
- (1) Identification of the source and each CO₂ budget unit at the source;
 - (2) at the CO₂ authorized account representative's option, the serial numbers of the CO₂ allowances that are to be deducted from the source's compliance account under section 23-605 for the control period, including the serial numbers of any CO₂ offset allowances that are to be deducted subject to the limitations of subdivision 23- 605(a)(3); and
 - (3) the compliance certification under subsection (c) of this section.
- (c) *Compliance certification.* In the compliance certification report under subsection (a) of this section, the CO₂ authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO₂ budget units at the source in compliance with the CO₂ Budget Trading Program, whether the source and each CO₂ budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO₂ Budget Trading Program, including:

- (1) Whether the source was operated in compliance with the CO₂ requirements of 23-105(c);
- (2) whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO₂ emissions to the unit, in accordance with Subchapter VIII;
- (3) whether all the CO₂ emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Subchapter VIII. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;
- (4) whether the facts that form the basis for certification under Subchapter VIII of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Subchapter VIII, if any, have changed; and
- (5) if a change is required to be reported under subdivision (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

23-402 Agency's action on compliance certifications.

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

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

Subchapter V. CO₂ Allowance Allocations

23-501 State of Vermont CO₂ trading program base budget.

(a) For 2027, the State of Vermont CO₂ Budget Trading Program base budget is 407,748 tons.

(b) For 2028, the State of Vermont CO₂ Budget Trading Program base budget is 356,779 tons.

(c) For 2029, the State of Vermont CO₂ Budget Trading Program base budget is 305,811 tons.

(d) For 2030, the State of Vermont CO₂ Budget Trading Program base budget is 254,842 tons.

(e) For 2031 the State of Vermont CO₂ Budget Trading Program base budget is 203,874 tons.

(f) For 2032 the State of Vermont CO₂ Budget Trading Program base budget is 152,905 tons.

(g) For 2033 the State of Vermont CO₂ Budget Trading Program base budget is 101,937 tons.

(h) For 2034 the State of Vermont CO₂ Budget Trading Program base budget is 87,374 tons.

(i) For 2035 the State of Vermont CO₂ Budget Trading Program base budget is 72,812 tons.

(j) For 2036 the State of Vermont CO₂ Budget Trading Program base budget is 58,250 tons.

(k) For 2037 and each succeeding calendar year, the State of Vermont CO₂ Budget Trading Program base budget is 43,687 tons.

23-502 RESERVED

23-503 CO₂ allowance allocations.

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

(b) *CO₂ allowances available for allocation.* For the allocation year 2027 and each succeeding calendar year, the State of Vermont CO₂ Budget Trading Program base budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances.

(c) *Cost Containment Reserve (CCR) allocation.* The State of Vermont shall allocate CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances, separate from and additional to the State of Vermont CO₂ Budget Trading Program base budget set forth in section 23-501, to the *consumer benefit or strategic energy purpose account*. The CCR allocation is for the purpose of containing the cost of CO₂ allowances. The State of Vermont shall allocate the CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances in the following manner:

- (1) Each calendar year the State of Vermont shall allocate 68,611 current vintage year CO₂ CCR tier 1 and 68,611 CO₂ CCR tier 2 allowances and withdraw the number of CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances that remain in the *consumer benefit or strategic energy purpose account* at the end of the prior calendar year.

Subchapter VI. CO₂ Allowance Tracking System (COATS)

23-601 CO₂ Allowance Tracking System (COATS) accounts.

- (a) *Compliance accounts.* Consistent with subsection 23-602(a), the Agency or its agent will establish one compliance account for each CO₂ budget source. Deductions or transfers of CO₂ allowances pursuant to sections 23-402, 23-605, 23-607, or Subchapter VII will be recorded in the compliance accounts in accordance with this Subchapter.
- (b) *General accounts.* Consistent with subsection 23-602(b), the Agency or its agent will establish, upon request, a general account for any person. Transfers of CO₂ allowances pursuant to Subchapter VII will be recorded in the general account in accordance with this Subchapter.

23-602 Establishment of accounts.

- (a) *Compliance accounts.* Upon receipt of a complete account certificate of representation under section 23-204, the Agency or its agent will establish a compliance account for each CO₂ budget source for which the account certificate of representation was submitted.
- (b) *General accounts.*
- (1) *Application for general account.* Any person may apply to open a general account for the purpose of holding and transferring CO₂ allowances. An application for a general account may designate one and only one CO₂ authorized account representative and one and only one CO₂ authorized alternate account representative who may act on behalf of the CO₂ authorized account representative. The agreement by which the CO₂ authorized alternate account representative is selected shall include a procedure for authorizing the CO₂ authorized alternate account representative to act in lieu of the CO₂ authorized account representative. A complete application for a general account shall be submitted to the Agency or its agent and shall include the following elements in a format prescribed by the Agency or its agent:

- (i) Name, address, e-mail address, telephone number, and facsimile transmission number of the CO₂ authorized account representative and any CO₂ authorized alternate account representative;
- (ii) at the option of the CO₂ authorized account representative, organization name and type of organization;
- (iii) a list of all persons subject to a binding agreement for the CO₂ authorized account representative or any CO₂ authorized alternate account representative to represent their ownership interest with respect to the CO₂ allowances held in the general account;
- (iv) the following certification statement by the CO₂ authorized account representative and any CO₂ authorized alternate account representative:

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

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

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

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

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

(b) The CO₂ authorized account representative and any CO₂ authorized alternate 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 CO₂ authorized alternate 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 CO₂ authorized alternate account representative by the Agency or its agent or a court regarding the general account.

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

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CO₂ authorized account

representative or any CO₂ authorized alternate 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 CO₂ authorized alternate account representative:

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

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

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

(i) The CO₂ authorized account representative for a general account may be changed at any time upon receipt by the Agency or its agent of a superseding complete application for a general account under subdivision (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous

CO₂ authorized account representative, or the previous CO₂ authorized alternate account representative, prior to the time and date when the Agency or its agent receives the superseding application for a general account shall be binding on the new CO₂ authorized account representative and the persons with an ownership interest with respect to the CO₂ allowances in the general account.

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

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

(iv) Within 30 days following any change in the persons having an ownership interest with respect to CO₂ allowances in the general account, including the addition of persons, the CO₂ authorized account representative or any CO₂ authorized alternate account representative

shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO₂ allowances in the general account to include the change.

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

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

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

(iii) Neither the Agency nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO₂ authorized account representative or any CO₂ authorized alternate 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 CO₂ authorized alternate account representative.*

(i) A CO₂ authorized account representative may delegate, to one

or more natural persons, his or her authority to make an electronic submission to the Agency or its agent provided for under Subchapters VI and VII.

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

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

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

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

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

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

“I agree that any electronic submission to the Agency or its agent

that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subdivision 23-602(b)(5)(iv) shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under subdivision 23-602(b)(5)(iv), I agree to maintain an e-mail account and to notify the Agency or its agent immediately of any change in my e-mail address unless all delegation authority by me under subdivision 23-602(b)(5) is terminated.”

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

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

(c) *Account identification.* The Agency or its agent will assign a unique identifying

number to each account established under subsections (a) or (b) of this section.

23-603 CO₂ Allowance Tracking System (COATS) responsibilities of CO₂ authorized account representative.

Following the establishment of a CO₂ Allowance Tracking System (COATS) account, all submissions to the Agency or its agent pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CO₂ allowances in the account, shall be made only by the CO₂ authorized account representative for the account.

23-604 Recordation of CO₂ allowance allocations.

(a) Each calendar year the Agency or its agent will record in the consumer benefit or strategic energy purpose account the CO₂ allowances for that calendar year.

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

23-605 Compliance.

(a) *Allowances available for compliance deduction.* CO₂ allowances that meet the following criteria are available to be deducted in order for a CO₂ budget source to comply with the CO₂ requirements of 23-105(c) for a control period or an interim control period.

(1) The CO₂ 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, or are transferred into the compliance account by a CO₂

allowance transfer correctly submitted for recordation under section 23-701 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 23-105(c) for a control period or an interim control period may not exceed 3.3 percent of the CO₂ budget source's CO₂ emissions for that control period, or may not exceed 3.3 percent of 0.50 times the CO₂ budget source's CO₂ emissions for an interim control period, as determined in accordance with Subchapters VI and VIII.

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

(b) *Deductions for compliance.* Following the recordation, in accordance with section 23-702, of any 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 Agency or its agent will deduct CO₂ allowances available under subsection (a) of this section to cover the source's CO₂ emissions (as determined in accordance with Subchapter VIII) for the control period or interim control period, as follows:

(1) Until the amount of CO₂ allowances deducted equals the number of tons of total CO₂ emissions (or 0.50 times the number of tons of total CO₂ emissions for an interim control period) determined in accordance with Subchapter VIII, from all CO₂ budget units at the CO₂ budget source for the control period or interim control period; or

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

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

deductions.

(1) The CO₂ authorized account representative for a source's compliance account may request that specific CO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period or interim control period in accordance with subsection (b) or (d) of this section. Such identification shall be made in the compliance certification report submitted in accordance with section 23-401.

(2) The Agency 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 subdivision (c)(1) of this section, in the following order:

(i) First, subject to the relevant compliance deduction limitations under subdivisions 23-605(a)(3) and (d)(1), CO₂ offset allowances. CO₂ offset allowances shall be deducted in chronological order (i.e., CO₂ offset allowances from earlier allocation years shall be deducted before CO₂ offset allowances from later allocation years). In the event that some, but not all, CO₂ offset allowances from a particular allocation year are to be deducted, CO₂ offset allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(ii) Second, any CO₂ allowances, other than CO₂ offset allowances, that are available for deduction under subsection 23-605(a). CO₂ allowances shall be deducted in chronological order (i.e., CO₂ allowances from earlier allocation years shall be deducted before CO₂ allowances from later allocation years). In the event that some, but not all, CO₂ allowances from a particular allocation year are to be deducted, CO₂ allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(d) *Deductions for excess emissions.*

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

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

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

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

(iii) 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.

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

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

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

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

(e) The Agency or its agent will record in the appropriate compliance account all deductions from such an account pursuant to subsections (b) and (d) of this section.

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

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

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

23-606 Banking.

Each CO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CO₂ allowance is deducted or transferred under section 23-402, section 23-605, section 23-607, or Subchapter VII.

23-607 Account error.

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

23-608 Closing of general accounts.

(a) A CO₂ authorized account representative of a general account may instruct the Agency or its agent to close the account by submitting a statement requesting deletion of the account from the CO₂ Allowance Tracking System (COATS) and by correctly submitting for recordation under section 23-701 a CO₂ allowance transfer of all CO₂ allowances in the account to one or more other CO₂ Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of one year or more and does not contain any CO₂ allowances, the Agency or its agent may notify the CO₂ authorized account representative for the account that the account will be closed in the CO₂ Allowance Tracking System (COATS) 30 business days after the notice is

sent. The account will be closed after the 30-day period unless before the end of the 30-day period the Agency or its agent receives a correctly submitted transfer of CO₂ allowances into the account under section 23-701 or a statement submitted by the CO₂ authorized account representative demonstrating to the satisfaction of the Agency or its agent good cause as to why the account should not be closed. The Agency or its agent will have sole discretion to determine if the CO₂ authorized account representative of the account demonstrated that the account should not be closed.

Subchapter VII. CO₂ Allowance Transfers

23-701 Submission of CO₂ allowance transfers.

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

- (a) The numbers identifying both the transferor and transferee accounts;
- (b) a specification by serial number of each CO₂ allowance to be transferred;
- (c) the printed name and signature of the CO₂ authorized account representative of the transferor account and the date signed;
- (d) the date of the completion of the last sale or purchase transaction for the allowance, if any; and
- (e) the purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subsection (d) of this section.

23-702 Recordation.

- (a) Within 5 business days of receiving a CO₂ allowance transfer, except as provided in subsection (b) of this section, the Agency or its agent will record a CO₂

allowance transfer by moving each CO₂ allowance from the transferor account to the transferee account as specified by the request, provided that:

- (1) the transfer is correctly submitted under section 23-701; and
 - (2) the transferor account includes each CO₂ allowance identified by serial number in the transfer.
- (b) A CO₂ allowance transfer into or out of a compliance account that is submitted for recordation following the CO₂ allowance transfer deadline and that includes any CO₂ allowances that are of allocation years that fall within a control period 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 23-605(b).
- (c) Where a CO₂ allowance transfer submitted for recordation fails to meet the requirements of subsection (a) of this section, the Agency or its agent will not record such transfer.

23-703 Notification.

- (a) *Notification of recordation.* Within 5 business days of recordation of a CO₂ allowance transfer under section 23-702, the Agency or its agent will notify each party to the transfer. Notice will be given to the CO₂ authorized account representatives of both the transferor and transferee accounts.
- (b) *Notification of non-recordation.* Within 10 business days of receipt of a CO₂ allowance transfer that fails to meet the requirements of subsection 23-702(a), the Agency or its agent will notify the CO₂ authorized account representatives of both accounts subject to the transfer of:
- (1) a decision not to record the transfer, and
 - (2) the reasons for such non-recordation.
- (c) Nothing in this section shall preclude the submission of a CO₂ allowance transfer for recordation following notification of non-recordation.

Subchapter VIII. Monitoring, Reporting and Recordkeeping

23-801 General requirements.

(a) *General requirements.* The owners and operators, and to the extent applicable, the CO₂ authorized account representative of a CO₂ budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in this Subchapter and all applicable sections of 40 CFR part 75. For purposes of complying with such requirements, the definitions in section 23-102 and in 40 CFR 72.2 shall apply, and the terms “affected unit,” “designated representative,” and “continuous emissions monitoring system” (or “CEMS”) in 40 CFR part 75 shall be replaced by the terms “CO₂ budget unit,” “CO₂ authorized account representative,” and “continuous emissions monitoring system” (or “CEMS”), respectively, as defined in section 23-102.

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

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

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

23-802 RESERVED.

23-803 RESERVED.

23-804 RESERVED.

23-805 Recordkeeping and reporting.

(a) *General provisions.* The CO₂ authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable record keeping and reporting requirements under 40 CFR 75.73 and with the requirements of subsection 23-201(e).

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

(c) *Certification applications.* The CO₂ authorized account representative shall submit an application to the Agency within 45 days after completing all CO₂ monitoring system initial certification or recertification tests required under CFR 75.63 and 40 CFR 75.53 (g) and (h).

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

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

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

(ii) for a unit commencing commercial operation on or after July 1, 2008, the calendar quarter corresponding to, the earlier of the date of provisional certification or the applicable deadline for initial certification under subsection 23-801(b) or, unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

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

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

- (i) the monitoring data submitted were recorded in accordance with the applicable requirements of this Subchapter and 40 CFR part 75, including the quality assurance procedures and specifications;
- (ii) for a unit with add-on CO₂ emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of 40 CFR part 75 and the substitute values do not systematically underestimate CO₂ emissions; and
- (iii) the CO₂ concentration values substituted for missing data under Subpart D of 40 CFR part 75 do not systematically underestimate CO₂ emissions.

23-806 Petitions.

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

(b) Petitions for a CO₂ budget unit that is 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 Agency requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this Subchapter only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Agency.

(2) In the event that the Administrator declines to review a petition under 40 CFR 75.66 as described in subdivision 23-806(b)(1), the CO₂ authorized account representative of a CO₂ budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the Agency requesting approval to apply an alternative to any requirement of this Subchapter. The petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of this Subchapter is in accordance with this Subchapter only to the extent

the petition is approved in writing by the Agency.

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

23-807 RESERVED.

23-808 Additional requirements to provide output data.

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

(b) A CO₂ budget unit in a state that requires gross output to be used that also reports gross hourly MW to the Administrator, shall use the same electronic data report (EDR) gross output (in MW), as submitted to the Administrator, for the hour times operating time in the hour, added for all hours in a year. A CO₂ budget unit that does not report gross hourly MW to the Administrator shall submit to the Agency or its agent information in accordance with subdivision 23-808(e)(1).

(c) A CO₂ budget unit in a state that requires net electrical output to be used shall submit to the Agency or its agent information in accordance with subdivision 23-808(e)(1). A CO₂ budget source whose electrical output is not used in ISO energy market settlement determinations shall propose to the Agency a method for

quantification of net electrical output.

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

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

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

(i) If the CO₂ budget unit monitors net electric output, the diagram should contain all CO₂ budget units and all generators served by each CO₂ budget unit and the relationship between CO₂ budget units and generators. If a generator served by a CO₂ budget unit is also served by a non-affected unit, the non-affected unit and its relationship to each generator should be indicated on the diagram as well. The diagram should indicate where the net electric output is measured and should include all electrical inputs and outputs to and from the plant. If net electric output is determined using a billing meter, the diagram should show each billing meter used to determine net sales of electricity and should show that all electricity measured at the point of sale is generated by the CO₂ budget units.

(ii) If the CO₂ budget unit monitors net thermal output, the diagram

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

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

(3) Submit a detailed description of all quality assurance/quality control activities that will be performed to maintain the output system in accordance with subsection 23-808(g).

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

(f) *Initial certification.* A certification statement must be submitted by the CO₂ authorized account representative stating that either the output monitoring system consists entirely of billing meters or that the output monitoring system meets one of

the accuracy requirements for non-billing meters at subdivision (f)(2) of this section. This statement may be submitted with the certification application required under subsection 23-805(c).

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

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

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

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

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

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

(2) *Non-billing meters.* Certain types of equipment such as potential transformers, current transformers, nozzle and venturi type meters, and the primary element of an orifice plate only require an initial certification of calibration and do not require periodic recalibration unless the equipment is physically changed. However, the pressure and temperature transmitters accompanying an orifice plate will require periodic retesting. For other types of equipment, the meter must be either recalibrated or re-verified for 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 23-808(e).

(h) *Recordkeeping and reporting.*

(1) *General provisions.* The CO₂ authorized account representative shall comply with all recordkeeping and reporting requirements in this section and

with the requirements of subsections 23-105(e) and 23-201(e).

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

(3) *Annual reports.* The CO₂ authorized account representative shall submit annual output reports, as follows. The data must be sent electronically by March 1 for the immediately preceding calendar year to the Agency or its agent. The annual report shall include unit level MWh, all useful steam output and a certification statement from the CO₂ authorized account representative stating the following:

“I am authorized to make this submission on behalf of the owners and operators of the CO₂ budget sources or CO₂ budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

Subchapter IX.

RESERVED