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TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 120 – AIR RESOURCES

SUBCHAPTER 05 – AIR POLLUTION CONTROL

PART 46 – CO₂ BUDGET TRADING PROGRAM

46.1 Purpose and Authority

46.1.1 Purpose

- A. The purpose of this Regulation is to establish the Rhode Island 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.

46.1.2 Authority

- A. These Regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(19) and R.I. Gen. Laws Chapters 23-23 and 23-82, and have been promulgated pursuant to the procedures set forth in the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

46.2 Repealed

46.3 Repealed

46.4 Incorporated Materials

- A. These Regulations hereby adopt and incorporate 40 C.F.R. § 75 (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these Regulations.
- B. These Regulations hereby adopt and incorporate the New York State Renewable Energy Standard Biomass Power Guide (June 2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these Regulations.

46.5 Definitions

- A. Unless otherwise expressly defined in this Section, the terms used in this Regulation shall be defined by reference to [Part 0 of this Subchapter](#) (General Definitions). As used in this Regulation, the following terms shall, where the context permits, be construed as follows:

1. "Account number" means the identification number given by the Department or its agent to each CO₂ Allowance Tracking System (COATS) account.
2. "Acid rain emissions limitation" means, a limitation on emissions of sulfur dioxide or nitrogen oxides under 42 U.S.C. §§ 7651-7651o (CAA §§ 401-416), as defined in 40 C.F.R. § 72.2.
3. "Acid rain program" means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under 42 U.S.C. §§ 7651-7651o (CAA §§ 401-416) and 40 C.F.R. §§ 72 through 78.
4. "Administrator" means the Administrator of the United States Environmental Protection Agency (USEPA) or the Administrator's authorized representative.
5. "Agent" means an independent contractor, United States Environmental Protection Agency (USEPA), consumer trustee, or other entity including a regional entity.
6. "Allocate" or "allocation" means the determination by the Department of the number of CO₂ allowances to be recorded in the Voluntary Renewable Energy Market Set-aside Account or the Rhode Island Auction/Sale Account.
7. "Allocation year" means a calendar year for which the Department allocates CO₂ allowances pursuant to § 46.8 of this Part. The allocation year of each CO₂ allowance is reflected in the unique identification number given to the allowance pursuant to § 46.12.4(C)(1) of this Part.
8. "Allowance auction" or "auction" means an auction in which the Department offers CO₂ allowances for sale.
9. "Attribute" means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.
10. "Attribute credit" means the attributes related to one megawatt-hour of electricity generation.
11. "Automated data acquisition and handling system" or "DAHS" means that component of the continuous emissions monitoring system, or other emissions monitoring system approved for use under §§ 46.13 and 46.14 of this Part, which is 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 §§ 46.13 and 46.14 of this Part.

12. "Billing meter" means a measurement device used to measure electric or thermal output for commercial billing under a contract where 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.
13. "Biogas" means the gas resulting from the decomposition of organic matter under anaerobic conditions. The principal constituents of which are methane and carbon dioxide.
14. "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.
15. "British thermal unit" or "Btu" means the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.
16. "CO₂" means carbon dioxide.
17. "CO₂ allowance" means a limited authorization by the Department or a participating state under the CO₂ Budget Trading Program to emit up to one ton of CO₂, subject to all applicable limitations contained in this Regulation.
18. "CO₂ allowance deduction" or "deduct CO₂ allowances" means the permanent withdrawal of CO₂ allowances, by the Department or its agent, from a CO₂ Allowance Tracking System (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 §§ 46.13 and 46.14 of this Part, or for the forfeit or retirement of CO₂ allowances as provided by this Regulation.
19. "CO₂ allowances held" means the CO₂ allowances, recorded by the Department or its agent or submitted to the Department or its agent for recordation in a CO₂ Allowance Tracking System (COATS) account in accordance with §§ 46.11 and 46.12 of this Part.
20. "CO₂ allowance tracking system" or "COATS" means the system by which the Department or its agent records allocations, deductions, and transfers of CO₂ allowances under the CO₂ Budget Trading Program. The tracking system may also be used to track CO₂ allowance prices and emissions from affected sources.
21. "CO₂ allowance tracking system account" (COATS account) means an account in the CO₂ Allowance Tracking System (COATS), established by

the Department or its agent, for purposes of recording the allocation, holding, transferring, or deducting of CO₂ allowances.

22. “CO₂ allowance transfer deadline” means 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 § 46.7(A) of this Part 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.
23. “CO₂ authorized account representative” means:
 - a. 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 to represent and legally bind each owner and operator in matters pertaining to the CO₂ Budget Trading Program in accordance with § 46.9 of this Part.
 - b. For a general account, the natural person who is authorized, under § 46.12 of this Part, to transfer or otherwise dispose of CO₂ allowances held in the general account. If the CO₂ budget source is also subject to the Acid Rain Program, CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Trading Program, CSAPR SO₂ Group 1 Trading Program or CSAPR SO₂ Group 2 Trading Program then, for a CO₂ Budget Trading program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.
24. “CO₂ authorized alternate account representative” means:
 - a. For a CO₂ budget source and each CO₂ budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO₂ budget units at the source to represent and legally bind each owner and operator in matters pertaining to the CO₂ Budget Trading Program in accordance with § 46.9 of this Part.
 - b. For a general account, the alternate natural person who is authorized, under § 46.12 of this Part, to transfer or otherwise dispose of CO₂ allowances held in the general account. If the CO₂ budget source is also subject to the Acid Rain Program, CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Trading Program, CSAPR SO₂ Group 1 Trading Program or CSAPR SO₂ Group 2 Trading Program then for a CO₂ Budget

Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.

25. "CO₂ budget emissions limitation" means 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 CO₂ budget source for a control period or twice the CO₂ allowances available for an interim control period.
26. "CO₂ budget permit" means the legally binding written document or portion of a 42 U.S.C. §§ 7661-7661f (CAA §§ 501-507) operating permit, issued by the Department under this Regulation and Part 29 of this Subchapter, to a CO₂ budget source or CO₂ budget unit that 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.
27. "CO₂ budget source" means a source that includes one or more CO₂ budget units.
28. "CO₂ budget trading program" means a multi-state CO₂ emissions reduction program established, pursuant to this Regulation and corresponding regulations in other participating states, as a means of reducing emissions of CO₂ from CO₂ budget sources.
29. "CO₂ budget unit" means a unit that is subject to the CO₂ Budget Trading Program requirements under § 46.6 of this Part.
30. "CO₂ cost containment reserve tier 1 allowance" or "CO₂ CCR tier 1 allowance" means a CO₂ allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO₂ allowances. CO₂ CCR tier 1 allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Rhode Island CO₂ Budget Trading Program budgets. CO₂ CCR tier 1 allowances are subject to all applicable limitations contained in this Regulation.
31. "CO₂ cost containment reserve tier 2 allowance" or "CO₂ CCR tier 2 allowance" means a CO₂ allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO₂ allowances. CO₂ CCR tier 2 allowances offered for sale at an auction are separate from and additional to CO₂ allowances allocated from the Rhode Island CO₂ Budget Trading Program budgets. CO₂ CCR tier 2 allowances are subject to all applicable limitations contained in this Regulation.
32. "CO₂ cost containment reserve tier 1 trigger price," or "CCR tier 1 trigger price" means the minimum price at which CO₂ CCR tier 1 allowances are offered for sale by the Department at an auction.

The CCR tier 1 trigger price shall be \$19.50 per CO₂ allowance in calendar year 2027. Each calendar year thereafter, the CCR tier 1 trigger price shall be 1.07 multiplied by the CCR tier 1 trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in § 46.5(A)(32)(a) of this Part (Table 1).

a. Table 1

CO ₂ CCR Tier 1 Trigger Price										
2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
\$19.50	\$20.87	\$22.33	\$23.89	\$25.56	\$27.35	\$29.26	\$31.31	\$33.50	\$35.85	\$38.36

33. CO₂ cost containment reserve tier 2 trigger price, or CCR tier 2 trigger price. The CCR tier 2 trigger price is the minimum price at which CO₂ CCR tier 2 allowances are offered for sale by the Department at an auction. The CCR tier 2 trigger price shall be \$29.25 per CO₂ allowance in calendar year 2027. Each calendar year thereafter, the CCR tier 2 trigger price shall be 1.07 multiplied by the CCR tier 2 trigger price from the previous calendar year, rounded to the nearest whole cent as shown in § 46.5(A)(33)(a) of this Part (Table 2).

a. Table 2

CO ₂ CCR Tier 2 Trigger Price										
2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
\$29.25	\$31.30	\$33.49	\$35.83	\$38.34	\$41.02	\$43.89	\$46.96	\$50.25	\$53.77	\$57.53

34. “CO₂ offset allowance” means a CO₂ allowance that is determined by the Department 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 § 46.12.5(A)(1)(c) of this Part.
35. “Combined cycle system” means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

36. "Combustion turbine" means 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.
37. "Commence commercial operation" means, 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 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 on the date the unit commences commercial operation, the date the unit becomes a CO₂ budget unit shall be the unit's date of commencement of commercial operation.
38. "Commence operation" means to begin any mechanical, chemical, or electronic process, including, start-up of a unit's combustion chamber. For a unit that is a CO₂ budget unit 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 on the date of commencement of operation, the date the unit becomes a CO₂ budget unit shall be the unit's date of commencement of operation.
39. "Compliance account" means a CO₂ Allowance Tracking System (COATS) account, established by the Department or its agent, for a CO₂ budget source under § 46.12 of this Part, in which the CO₂ allowances for the source are held and available for use by the source for a control period or interim control period for the purpose of meeting the CO₂ requirements of § 46.7(A) of this Part.
40. "Continuous emissions monitoring system" or "CEMS" means the equipment required under § 46.13 of this Part to sample, analyze, measure, and provide, by means of readings recorded at least once every fifteen (15) minutes (using an automated DAHS) and a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with §§ 46.13 and 46.14 of this Part and with 40 C.F.R. § 75 incorporated in § 46.4(A) of this Part. The following systems are types of continuous emissions monitoring systems required under § 46.13.
 - (1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

- (2) A nitrogen oxides emissions rate (or NOX-diluent) monitoring system, consisting of a NOX pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NOX concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂; and NOX emissions rate, in pounds per million British thermal units (lb/MMBtu);
 - (3) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;
 - (4) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and
 - (5) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.
41. "Control period" means a three-calendar-year period. The first control period is from January 1, 2009 to December 31, 2011, inclusive. Each subsequent three-calendar-year period is a separate control period. The first two (2) calendar years of each control period are each defined as an interim control period, beginning on January 1, 2015.
 42. "Cross state air pollution rule NO_x annual trading program" or "CSAPR NO_x annual trading program" means a multi-state NO_x air pollution control and emission reduction program established in accordance with 40 C.F.R. § 97, subpart AAAAA and 40 C.F.R. § 52.38(a), including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(a)(3) or (4) or that is established in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO_x.
 43. "Cross state air pollution rule NO_x ozone season trading program" or "CSAPR NO_x ozone season trading program" means a multi-state NO_x air pollution control and emission reduction program established in accordance with 40 C.F.R. § 97, subpart BBBBB and 40 C.F.R. § 52.38(b), including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. § 52.38(b)(3) or (4) or that is established in a SIP revision approved by the Administrator under 40

C.F.R. § 52.38(b)(5), as a means of mitigating interstate transport of ozone and NOx.

44. "Cross state air pollution rule SO₂ Group 1 Trading Program" or "CSAPR SO₂ group 1 trading program" means a multi-state SO₂ air pollution control and emission reduction program established in accordance with 40 C.F.R. § 97, subpart CCCCC and 40 C.F.R. § 52.39(a), (b), (d) through (f), (j), and (k), including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. § 52.39(d) or (e) or that is established in a SIP revision approved by the Administrator under 40 C.F.R. § 52.39(f), as a means of mitigating interstate transport of fine particulates and SO₂.
45. "Cross state air pollution rule SO₂ group 2 trading program" or "CSAPR SO₂ group 2 trading program" means a multi-state SO₂ air pollution control and emission reduction program established in accordance with 40 C.F.R. § 97, subpart DDDDD and 40 C.F.R. § 52.39(a), (c), and (g) through (k), including such a program that is revised in a SIP revision approved by the Administrator under 40 C.F.R. § 52.39(g) or (h) or that is established in a SIP revision approved by the Administrator under 40 C.F.R. § 52.39(i), as a means of mitigating interstate transport of fine particulates and SO₂.
46. "Eligible biomass" means sustainably harvested, woody, and herbaceous fuel sources that are available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, unadulterated wood and wood residues, animal wastes, other clean organic wastes not mixed with other solid wastes, and biogas derived from such fuel sources. Sustainably harvested will be determined by the Department.
47. "Excess emissions" means any tonnage of CO₂ emitted by a CO₂ budget source during a control period that exceeds the CO₂ budget emissions limitation for the source.
48. "Excess interim emissions" means 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.
49. "Fossil fuel-fired" means:
 - a. With regard to a unit that commenced operation prior to January 1, 2005, the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 50 percent (50%) of the annual heat input on a Btu basis during any year.
 - b. 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 (5%) of the annual heat input on a Btu basis during any year.

50. "General account" means a CO₂ Allowance Tracking System (COATS) account, established under § 46.12 of this Part, that is not a compliance account.
51. "Gross generation" means the electrical output in MWe at the terminals of the generator.
52. "Interim control period" means a one-calendar-year time period, during each of the first and second calendar years of each three-year control period. The first interim control period starts on January 1, 2015, and ends on December 31, 2015, inclusive. The second interim control period starts on January 1, 2016, and ends on December 31, 2016, inclusive. Each successive three-year control period will have two (2) interim control periods, comprised of each of the first two (2) calendar years of that control period.
53. "Life-of-the-unit contractual arrangement" means 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 associated energy from any specified unit, pursuant to a contract:
 - a. For the life of the unit; or
 - b. For a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or
 - c. For a period equal to or greater than twenty-five (25) years or seventy percent (70%) 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.
54. "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use of 40 C.F.R. § 75, Appendix D, to report heat input, this value should be calculated, in accordance with 40 C.F.R. § 75 incorporated in § 46.4(A) of this Part, 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 C.F.R. § 75 incorporated in § 46.4(A) of this Part, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

55. “Minimum reserve price” means the minimum reserve price in calendar year 2027 shall be \$9.00. Each calendar year thereafter, the minimum reserve price shall be 1.07 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent, as shown in § 46.5(A)(55)(a) of this Part (Table 3).

a. Table 3

Minimum Reserve Price													
2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
\$2.56	\$2.62	\$2.69	\$9.00	\$9.63	\$10.30	\$11.02	\$11.79	\$12.62	\$13.50	\$14.45	\$15.46	\$16.54	\$17.70

56. “Monitoring system” means any monitoring system that meets the requirements of § 46.13 of this Part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.
57. “Megawatt” or “MW” means a unit of power equal to 1000 kilowatts or 1,000,000 watts.
58. “MMBtu” means one million British thermal units.
59. “MWe” means megawatt electrical.
60. “Megawatt-hour” or “MWh” means the amount of power (in megawatts) used or produced in an hour.
61. “Nameplate capacity” means the maximum electrical output (in MWe) that an electric generating unit can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.
62. "Net-electric output" means the amount of gross generation the 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 transformer losses as measured at the transmission side of the step up transformer (e.g., the point of sale).
63. “Offset project” means a historical project that allowed the Department to determine how many CO₂ Offset Allowances to record in a sponsor’s

general account related to specific emissions reductions outside of the electricity sector. These projects can no longer be approved for the CO₂ Budget trading program, but the CO₂ offset allowances created before January 1, 2027, are eligible to meet the compliance deduction as limited under § 46.12.5 (A)(1)(c).

64. “Operator” means any person who operates, controls, or supervises a CO₂ budget unit or a CO₂ budget source, including, but not limited to, any holding company, utility system, or plant manager of such a unit or source.
65. “Owner” means any of the following persons:
 - a. Any holder of any portion of the legal or equitable title in a CO₂ budget unit; or
 - b. Any holder of a leasehold interest in a CO₂ budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO₂ budget unit; or
 - c. Any purchaser of power from a CO₂ budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or
 - d. With respect to any general account, any person who has an ownership interest with respect to the CO₂ allowances held in the general account and who is subject to the binding agreement for the CO₂ authorized account representative to represent that person's ownership interest with respect to the CO₂ allowances.
66. “Participating state” means a state that has established a corresponding regulation as part of the CO₂ Budget Trading Program.
67. “Receive” or “receipt of” means, when referring to the Department or its agent, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or its agent in the regular course of business.
68. “Recordation,” “record” or “recorded” means, with regard to CO₂ allowances, the movement of CO₂ allowances or CO₂ offset allowances by the Department or its agent from one CO₂ Allowance Tracking System (COATS) account to another for purposes of allocation, transfer or deduction.

69. "Renewable energy" means electricity generated from biomass, wind, solar thermal, photovoltaic, geothermal, hydroelectric facilities certified by the Low Impact Hydroelectric Institute, wave and tidal action and fuel cells powered by renewable fuels.
70. "Renewable portfolio standard" means a statutory or regulatory requirement that a load-serving entity provide a certain portion of the electricity it supplies to its customers from renewable energy sources, or any other statutory or regulatory requirement that a certain portion of electricity supplied to the electricity grid be generated from renewable energy sources.
71. "Reserve price" means the minimum acceptable price for each CO₂ allowance in a specific auction. The reserve price at an auction is either the minimum reserve price, the CCR tier 1 trigger price, or the CCR tier 2 trigger price as specified in Part 47 of this Subchapter.
72. "Rhode Island Auction/Sale account" means an account administered by the Department or its agent for purposes of auctioning or selling CO₂ allowances.
73. "Rhode Island CO₂ budget trading program base budget" means the Rhode Island CO₂ Budget Trading Program base budget specified in § 46.8.1 of this Part and 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 Rhode Island CO₂ Budget Trading Program Base Budget.
74. "Serial number" means, when referring to CO₂ allowances, the unique identification number assigned to each CO₂ allowance by the Department or its agent, under § 46.12.4(C) of this Part.
75. "Short ton" means a measure of weight equal to two thousand (2,000) pounds or 0.9072 metric tons.
76. "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant under 42 U.S.C. § 7401, (CAA § 502(c)), a "source," including a "source" with multiple units, shall be considered a single "facility."
77. "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.
78. "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- a. In person;
 - b. By United States Postal Service;
 - c. By other means of dispatch or transmission and delivery
 - d. 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.
79. “Ton” or “tonnage” means any short ton. For the purpose of determining compliance with the CO₂ requirements of § 46.7(A) of this Part, 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 §§ 46.13 and 46.14 of this Part, 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 (0) tons.
80. “Undistributed CO₂ allowances” means CO₂ allowances originally allocated to a set aside account as pursuant to § 46.8.3(K) of this Part, that were not distributed.
81. “Unit” means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.
82. “Unit operating day” means a calendar day in which a unit combusts any fuel.
83. “Unsold CO₂ allowances” means CO₂ allowances that have been made available for sale in an auction conducted by the Department, but not sold.
84. “Voluntary renewable energy purchase” means a purchase of electricity from renewable energy generation or renewable energy attribute credits by a retail electricity customer on a voluntary basis. Renewable energy includes electricity generated from biomass, wind, solar thermal, photovoltaic, geothermal, hydroelectric facilities certified by the Low Impact Hydropower Institute, wave and tidal action, and fuel cells powered by renewable fuels. The renewable energy generation or renewable energy attribute credits related to such purchases may not be used by the generator or purchaser to meet any regulatory mandate, such as a renewable portfolio standard.
85. “Voluntary renewable energy market set-aside account” means an account established by the Department to hold CO₂ allowances that are allocated pursuant to § 46.8.3(D) of this Part.

46.6 Applicability

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

46.7 General Requirements

- A. Carbon dioxide 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 § 46.12.5 of this Part, as of the CO₂ allowance transfer deadline, as defined in § 46.5(A)(22) of this Part, 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, with respect to the previous interim control periods, as determined in accordance with §§ 46.12 through 46.14 of this Part.
 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 § 46.12.5 of this Part, as of the CO₂ allowance transfer deadline, as defined in § 46.5(A)(22) of this Part, 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 §§ 46.12 through 46.14 of this Part.
 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 Regulation and applicable State law.
 4. Each ton of excess interim emissions shall constitute a separate violation of this Regulation and applicable State law.
 5. A CO₂ budget unit shall be subject to the requirements under § 46.7(A)(1) of this Part starting January 1, 2009, or the date on which the unit commences operation, whichever is later.
 6. CO₂ allowances shall be held in, deducted from, or transferred among CO₂ Allowance Tracking System (COATS) accounts in accordance with §§ 46.8, 46.11, and 46.12 of this Part.

7. A CO₂ allowance shall not be deducted, in order to comply with the requirements under § 46.7(A) of this Part, for a control period or interim control period that ends prior to the year for which the CO₂ allowance was allocated. A CO₂ offset allowance shall not be deducted, in order to comply with the requirements under § 46.7(A) of this Part, beyond the applicable percent limitations set out in § 46.12.5(A)(1)(c) of this Part.
8. A CO₂ allowance under the CO₂ Budget Trading Program is a limited authorization by the Department or a participating state to emit one ton of CO₂ in accordance with the CO₂ Budget Trading Program. No provision of the CO₂ Budget Trading Program, the CO₂ budget permit application, the CO₂ budget permit or any provision of law shall be construed to limit the authority of the Department or a participating state to terminate or limit such authorization.
9. A CO₂ allowance under the CO₂ Budget Trading Program does not constitute a property right.

B. Excess emissions requirements

1. 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:
 - a. Forfeit the CO₂ allowances required for deduction under § 46.12.5(D)(1) of this Part; provided CO₂ offset allowances may not be used to cover any part of such excess emissions; and
 - b. Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 46.12.5(D)(2) of this Part.

C. 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 ten (10) years from the date the document is created. This period may be extended for cause, at any time prior to the end of ten (10) years, in writing by the Department.
 - a. 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 § 46.9.5 of this Part, 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.

- b. All emissions monitoring information, in accordance with §§ 46.13 and 46.14 of this Part and 40 C.F.R. § 75.57 incorporated in § 46.4(A) of this Part.
 - c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO₂ Budget Trading Program.
 - d. 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 §§ 46.13 through 46.15 of this Part.

D. 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 §§ 46.13 and 46.14 of this Part.
2. The emissions measurements recorded and reported in accordance with this Section shall be used to determine compliance by the unit with the CO₂ requirements of § 46.13 of this Part.

E. 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.

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

F. Effect on other authorities

1. No provision of the CO₂ Budget Trading Program, a CO₂ budget permit application, or a CO₂ budget permit, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO₂ authorized account representative of a CO₂ budget source or CO₂ budget unit, from compliance with any other provision of any Air Pollution Control Regulation, the Rhode Island State Implementation Plan, a federally enforceable permit, or the Clean Air Act (42 U.S.C. § 7401).

G. Computation of time

1. 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.
2. 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.
3. Unless otherwise stated, if the final day of any time period under the CO₂ Budget Trading Program falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

H. Indemnification

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

46.8 CO₂ Allowance Allocations

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

- A. The Rhode Island CO₂ Budget Trading Program base budget is 1,416,165 tons for the 2027 allocation year.
- B. The Rhode Island CO₂ Budget Trading Program base budget is 1,239,145 tons for the 2028 allocation year.
- C. The Rhode Island CO₂ Budget Trading Program base budget is 1,062,124 tons for the 2029 allocation year.
- D. The Rhode Island CO₂ Budget Trading Program base budget is 885,103 tons for the 2030 allocation year.
- E. The Rhode Island CO₂ Budget Trading Program base budget is 708,083 tons for the 2031 allocation year.
- F. The Rhode Island CO₂ Budget Trading Program base budget is 531,062 tons for the 2032 allocation year.
- G. The Rhode Island CO₂ Budget Trading Program base budget is 354,041 tons for the 2033 allocation year.
- H. The Rhode Island CO₂ Budget Trading base budget is 303,464 tons for the 2034 allocation year.
- I. The Rhode Island CO₂ Budget Trading base budget is 252,887 tons for the 2035 allocation year.
- J. The Rhode Island CO₂ Budget Trading base budget is 202,309 tons for the 2036 allocation year.
- K. The Rhode Island CO₂ Budget Trading base budget is 151,732 tons for the 2037 allocation year and each succeeding calendar year or as established in a future program adjustment.

46.8.2 Undistributed and unsold CO₂ allowances

- A. The Department may retire undistributed CO₂ allowances at the end of each control period.
- B. The Department may retire unsold CO₂ allowances at the end of each control period.

46.8.3 CO₂ allowance allocations

- A. The Department shall allocate to the Rhode Island Auction/Sale Account CO₂ allowances to be auctioned or sold in accordance with [Part 47 of this Subchapter](#) (CO₂ Budget Trading Program Allowance Distribution).
- B. CO₂ Allowances available for allocation.

1. For the allocation year 2027 and each succeeding calendar year, the Rhode Island 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 tier1 and CO₂ CCR tier 2 allowances.

C. Cost Containment Reserve (CCR) allocation.

1. The Department shall allocate CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances, separate from and additional to the Rhode Island CO₂ Budget Trading Program base budget set forth in § 46.8.1 of this Part, to the Rhode Island Auction/Sale account. The CCR allocation is for the purpose of containing the cost of CO₂ allowances. The Department shall allocate CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances in the following manner:
 - a. On or before January 1, 2027, and each year thereafter, the Department or its agent shall allocate 238,297 current vintage year CO₂ CCR tier 1 and 238,297 CO₂ CCR tier 2 allowances and withdraw the number of CO₂ CCR tier 1 and CO₂ CCR tier 2 allowances that remain in the Rhode Island Auction/Sale account at the end of the prior calendar year.

D. Voluntary renewable energy market set-aside allocation.

1. The Department shall open and manage a general account for the voluntary renewable energy market set-aside for each allocation year.
2. The Department shall allocate one percent (1%) of the number of allowances of the annual base budget to the voluntary renewable energy market set-aside account.
3. The Department shall permanently retire CO₂ allowances from the voluntary renewable energy market set-aside account for a given allocation year. The number of allowances to be retired shall be made based on the following:
 - a. Any person may submit data to the Department or the Department may gather data documenting purchases of voluntary renewable energy that meet the requirements of § 46.8.3(D)(3)(a) of this Part by no later than the July 30 immediately following the allocation year for which it is being made and must include information to assure that the voluntary renewable energy purchase demonstrates creditable CO₂ emissions reductions. Such data must be from reputable sources, which may include retail electricity providers, organizations that certify renewable energy products, and other parties as determined by the Department. To be considered, data must be verifiable and document the following for voluntary renewable energy purchases:

- (1) Documentation of voluntary purchases of New England Power Pool Generation Information System (NEPOOL-GIS) certificates by retail customers, by customer class, in the State during the allocation year immediately preceding the application date.
- (2) Documentation that the NEPOOL GIS certificates were procured by the retail provider and retired voluntarily for energy use in RI.
- (3) Time period when the retail purchase(s) was made.
- (4) State where the electricity was generated or the NEPOOL GIS certificate was created, including documentation of facility name, unique generator identification number, and fuel type.
- (5) Time period when the electricity was generated or the NEPOOL GIS certificate was created.

- b. By October 31 following the June 15th application deadline established in § 46.8.3(D)(3)(a) of this Part, the Department will determine the actual MWh of voluntary renewable energy market purchases that occurred during the allocation year. The Department will retire CO₂ allowances from the voluntary renewable set-aside account in the amount up to the number of CO₂ tons represented by actual voluntary renewable energy market purchases, based on actual MWh purchases demonstrated by each applicant as follows:

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

Where: CO₂ tons = (rounded down to the nearest whole ton) the number of allowances to be retired from the set-aside account.

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

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

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

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

46.9 CO₂ Authorized Account Representative for CO₂ Budget Sources

46.9.1 Authorization and responsibilities of the CO₂ authorized account representative

- A. Except as provided under § 46.9.2 of this Part, 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 § 46.9.5 of this Part.
- C. Upon receipt, by the Department or its agent, of a complete account certificate of representation under § 46.9.5 of this Part, the CO₂ authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CO₂ budget source represented and each CO₂ budget unit at the source in all matters pertaining to the CO₂ Budget Trading Program, notwithstanding any agreement between the CO₂ authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO₂ authorized account representative by the Department or a court regarding the source or unit.
- D. No CO₂ budget permit shall be issued, and no CO₂ Allowance Tracking System (COATS) account shall be established for a CO₂ budget source, until the Department or its agent has received a complete account certificate of representation under § 46.9.5 of this Part, 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:
 - 1. “I am authorized to make this submission on behalf of the owners and operators of the CO₂ budget sources or CO₂ budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant

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

- F. The Department or its agent will accept or act on a submission made on behalf of owners or operators of a CO₂ budget source or a CO₂ budget unit only if the submission has been made, signed, and certified in accordance with § 46.9.1(E) of this Part.

46.9.2 CO₂ authorized alternate account representative

- A. An account certificate of representation may designate one (1) and only one (1) 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 Department or its agent of a complete account certificate of representation under § 46.9.5 of this Part, 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 §§ 46.9.1(A), 46.9.3, 46.9.4, 46.9.5, and 46.12.2 of this Part, whenever the term “CO₂ authorized account representative” is used in this Regulation, the term shall be construed to include the CO₂ authorized alternate account representative.

46.9.3 Changing the CO₂ authorized account representatives and the CO₂ authorized alternate account representative

- A. CO₂ authorized account representative.
 - 1. The CO₂ authorized account representative may be changed at any time upon receipt, by the Department or its agent, of a superseding complete account certificate of representation under § 46.9.5 of this Part. 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 Department or its agent receives the superseding account certificate of representation shall be binding on the new CO₂ authorized account representative and the owners and operators of the CO₂ budget source and the CO₂ budget units at the source.
- B. CO₂ authorized alternate account representative.

1. The CO₂ authorized alternate account representative may be changed at any time upon receipt, by the Department or its agent, of a superseding complete account certificate of representation under § 46.9.5 of this Part. 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 Department 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.

46.9.4 Changes in the owners and operators

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

46.9.5 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 Department or its agent:
 1. Identification of the CO₂ budget source and each CO₂ budget unit at the source for which the account certificate of representation is submitted.
 2. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of the CO₂ authorized account representative and any 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:

- a. "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 Department or a court regarding the source or unit."
 - 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 Department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or its agent. Neither the Department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

46.9.6 Objections concerning the CO₂ authorized account representative

- A. Once a complete account certificate of representation under § 46.9.5 of this Part, has been submitted and received, the Department and its agent will rely on the account certificate of representation unless and until the Department or its agent receives a superseding complete account certificate of representation under § 46.9.5 of this Part.
- B. Except as provided in §§ 46.9.3(A) or (B) of this Part, no objection or other communication submitted to the Department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO₂ authorized account representative shall affect any representation, action, inaction, or submission of the CO₂ authorized account representative or the finality of any decision or order by the Department or its agent under the CO₂ Budget Trading Program.
- C. Neither the Department nor its agent will adjudicate the interest of private parties including but not limited to those concerning the authorization or any representation, action, inaction, or submission of any CO₂ authorized account representative, including private legal disputes concerning the proceeds of CO₂ allowance transfers.

46.9.7 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 Department or its agent under this Regulation.
- 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 Department or its agent under this Regulation.
- C. In order to delegate authority to make an electronic submission to the Department or its agent in accordance with §§ 46.9.7(A) and (B) of this Part, the CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, shall submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following elements:
 - 1. The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CO₂ authorized account representative or CO₂ authorized alternate account representative.
 - 2. The name, address, e-mail address, telephone number and facsimile transmission number (if any) of each such natural person, herein referred to as the “electronic submission agent”.
 - 3. For each such natural person, a list of the types of electronic submissions under §§ 46.9.7(A) and (B) of this Part for which authority is delegated to them.
 - 4. The following certification statements by such CO₂ authorized account representative or CO₂ authorized alternate account representative:
 - a. “I agree that any electronic submission to the Department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made 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 250-RICR-120-05-46.9.7(D) (CO₂ Budget Trading Program) shall be deemed to be an electronic submission by me.”
 - b. “Until this notice of delegation is superseded by another notice of delegation under 250-RICR-120-05-46.9.7(D) (CO₂ Budget Trading Program), I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under 250-RICR-120-05-46.9.7 (CO₂ Budget Trading Program) is terminated.”

- D. A notice of delegation, submitted under § 46.9.7(C) of this Part, 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 Department or its agent, and until receipt, by the Department or its agent, of a superseding notice of delegation by such CO₂ authorized account representative or 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 § 46.9.7(C)(4)(a) of this Part and made in accordance with a notice of delegation effective under § 46.9.7(D) of this Part 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 § 46.9.7 of 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 § 46.9.7 of this Part.
- H. In order to delegate authority to review information in the CO₂ allowance tracking system (COATS) in accordance with §§ 46.9.7(F) and (G) of this Part, the CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, must submit, to the Department or its agent, a notice of delegation, in a format prescribed by the Department that includes the following elements:
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 §§ 46.9.7(F) and (G) of this Part for which reviewing authority is delegated to him or her; and
 4. The following certification statements by such CO₂ authorized account representative or CO₂ authorized alternate account representative;
 - a. "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 250-RICR-120-05-46.9.7(I) (CO₂ Budget Trading Program) shall be deemed to be a reviewer by me."

b. "Until this notice of delegation is superseded by another notice of delegation under 250-RICR-120-05-46.9.7(I) (CO₂ Budget Trading Program). I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under 250-RICR-120-05-46.9 (CO₂ Budget Trading Program) is terminated."

I. A notice of delegation submitted under § 46.9.7(H) of this Part 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 Department or its agent, and until receipt, by the Department or its agent, of a superseding notice of delegation by such CO₂ authorized account representative or 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.

46.10 Permits

46.10.1 Permit requirements

- A. Each CO₂ budget permit source and each CO₂ budget unit must have a CO₂ budget permit issued under the requirements of this Regulation and shall:
1. Submit, to the Department, a complete CO₂ budget permit application under § 46.10.3 of this Part, in accordance with the deadline specified in § 46.10.2 of this Part; and
 2. Submit, in a timely manner, any supplemental information that the Department determines is necessary in order to review a CO₂ budget permit application and issue or deny a CO₂ budget permit.
- B. The owners and operators of each CO₂ budget source and each CO₂ budget unit shall operate the CO₂ budget source and CO₂ budget unit in compliance with the requirements of such CO₂ budget permit.
- C. Each CO₂ budget permit is deemed to incorporate automatically the definitions of terms under § 46.5 of this Part.

46.10.2 Submission of CO₂ budget permit applications

- A. The CO₂ authorized account representative of any CO₂ budget source shall submit, to the Department or its agent, a complete CO₂ budget permit application under § 46.10.3 of this Part by January 1, 2009, or twelve (12) months before the date on which the CO₂ budget source, or a new unit at the source, commences operation, whichever is later.

46.10.3 CO₂ budget permit applications

- A. A complete CO₂ budget permit application shall include the following elements concerning the CO₂ budget source for which the application is submitted, in a format prescribed by the Department:
- B. 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;
- C. Identification of each CO₂ budget unit at the CO₂ budget source;
- D. An output monitoring plan that meets the requirements in § 46.14.7(C) of this Part; and
- E. Any other information requested by the Department.

46.10.4 CO₂ budget permit revisions

- A. If the CO₂ budget source is required to have a 42 U.S.C. §§ 7661-7661f (CAA §§ 501-507) operating permit under [Part 29 of this Subchapter](#) (Operating Permits), the CO₂ budget portion of the 42 U.S.C. §§ 7661-7661f (CAA §§ 501-507) operating permit shall be modified in accordance with the procedures in [Part 29 of this Subchapter](#) (Operating Permits).

46.10.5 Duty to reapply

- A. For a CO₂ budget source required to have a 42 U.S.C. §§ 7661-7661f (CAA §§ 501-507) operating permit, the CO₂ authorized account representative shall submit a complete CO₂ budget permit application under § 46.10.3 of this Part, for the CO₂ budget source covering the CO₂ budget units at the source in accordance with the provisions of [Part 29 of this Subchapter](#) (Operating Permits) addressing permit renewals.
- B. For a CO₂ budget source not required to have a 42 U.S.C. §§ 7661-7661f (CAA §§ 501-507) operating permit, the CO₂ authorized account representative shall submit a complete CO₂ budget permit application under § 46.10.3 of this Part, for the CO₂ budget source covering the CO₂ budget units at the source in accordance with the provisions of Rhode Island Air Pollution Control Regulation [Part 29 of this Subchapter](#) (Operating Permits) addressing permit renewals.

46.11 CO₂ Allowance Transfers

46.11.1 Submission of CO₂ allowance transfers

- A. The CO₂ authorized account representatives seeking recordation of a CO₂ allowance transfer shall submit the transfer to the Department or its agent. To be considered correctly submitted, the CO₂ allowance transfer shall include the following elements in a format specified by the Department or its agent:
1. The numbers identifying both the transferor and transferee accounts;
 2. A specification by serial number of each CO₂ allowance to be transferred;
 3. The printed name and signature of the CO₂ authorized account representative of the transferor account and the date signed;
 4. The date of the completion of the last sale or purchase transaction for the allowance, if any; and
 5. The purchase or sale price of the allowance that is the subject of a sale or purchase transaction under § 46.11.1(A)(4) of this Part.

46.11.2 Recordation

- A. Within five (5) business days of receiving a CO₂ allowance transfer, except as provided in § 46.11.2(B) of this Part, the Department or its agent will record a CO₂ allowance transfer by moving each CO₂ allowance from the transferor account to the transferee account as specified by the request, provided that:
1. The transfer is correctly submitted under § 46.11.1 of this Part;
 2. The transferor account includes each CO₂ allowance identified by serial number in the transfer; and
 3. The transfer meets all other requirements of this Regulation.
- B. A CO₂ allowance transfer into or out of a compliance account that is submitted for recordation following the CO₂ allowance transfer deadline, as defined in § 46.5(A)(22) of this Part, 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 § 46.12.5(B) of this Part.
- C. Where a CO₂ allowance transfer submitted for recordation fails to meet the requirements of § 46.11.2(A) of this Part, the Department or its agent will not record such transfer.

46.11.3 Notification

A. Notification of recordation.

1. The Department or its agent will notify each party to the transfer within five (5) business days of recordation of a CO₂ allowance transfer under § 46.11.2 of this Part. Notice will be given to the CO₂ authorized account representatives of both the transferor and transferee accounts.

B. Notification of non-recordation.

1. The Department or its agent will notify the CO₂ authorized account representatives of both accounts subject to the transfer of the following within ten (10) business days of receipt of a CO₂ allowance transfer that fails to meet the requirements of § 46.11.2(A) of this Part:
 - a. A decision not to record the transfer, and
 - b. The reasons for such non-recordation.

C. Nothing in this Section shall preclude the submission of a CO₂ allowance transfer for recordation following notification of non-recordation. All submissions of CO₂ allowances following notification of non-recordation are subject to the provisions of § 46.11 of this Part.

46.12 CO₂ Allowance Tracking System (COATS)

46.12.1 CO₂ Allowance Tracking System (COATS) accounts

A. Nature and function of compliance accounts.

1. Consistent with § 46.12.2(A) of this Part, the Department or its agent will establish one compliance account for each CO₂ budget source. Deductions or transfers of CO₂ allowances pursuant to §§ 46.11, 46.12.5, 46.12.7, or 46.15.2 of this Part will be recorded in the compliance accounts in accordance with § 46.12 of this Part.

B. Nature and function of general accounts.

1. Consistent with § 46.12.2(B) of this Part, the Department or its agent will establish, upon request, a general account for any person. Transfers of CO₂ allowances pursuant to § 46.11 of this Part, will be recorded in the general account in accordance with § 46.11 of this Part.

46.12.2 Establishment of accounts

A. Compliance accounts.

1. Upon receipt of a complete account certificate of representation under § 46.9.5 of this Part, the Department or its agent will establish a compliance account for each CO₂ budget source for which the account certificate of representation was submitted.

B. General accounts.

1. Application for general account.
 - a. 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 Department or its agent and shall include the following elements in a format prescribed by the Department or its agent:
 - (1) Name, mailing address, e-mail address, telephone number, and facsimile transmission number (if any) of the CO₂ authorized account representative and any CO₂ authorized alternate account representative;
 - (2) At the option of the CO₂ authorized account representative, organization name and type of organization;
 - (3) 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;
 - (4) The following certification statement by the CO₂ authorized account representative and any CO₂ authorized alternate account representative:
 - (A) "I certify that I was selected as the CO₂ authorized account representative or the CO₂ authorized alternate account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and

responsibilities under the CO₂ Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Department or its agent or a court regarding the general account.”

- (5) The signature of the CO₂ authorized account representative and any CO₂ authorized alternate account representative and the dates signed; and
- (6) Unless otherwise required by the Department or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the Department or its agent. Neither the Department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Authorization of CO₂ authorized account representative.

- a. Upon receipt by the Department or its agent of a complete application for a general account under § 46.12.2(B)(1) of this Part:
 - (1) The Department or its agent will establish a general account for the person or persons for whom the application is submitted.
 - (2) 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 Department or its agent or a court regarding the general account.
 - (3) 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.

- b. 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:
 - (1) “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.
 - c. The Department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with § 46.12.2(B)(2)(b) of this Part.
3. Changing CO₂ authorized account representative and CO₂ authorized alternate account representative; changes in persons with ownership interest.
- a. The CO₂ authorized account representative for a general account may be changed at any time upon receipt, by the Department or its agent, of a superseding complete application for a general account under § 46.12.2(B)(1) of this Part. 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 Department or its agent receives the superseding application for a general account shall be binding on the new CO₂ authorized account representative and the persons with an ownership interest with respect to the CO₂ allowances in the general account.
 - b. The CO₂ authorized alternate account representative for a general account may be changed at any time upon receipt by the

Department or its agent of a superseding complete application for a general account under § 46.12.2(B)(1) of this Part. 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 Department 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.

- c. In the event a new person having an ownership interest with respect to CO₂ allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO₂ authorized account representative and any CO₂ authorized alternate account representative, and the decisions, orders, actions, and inactions of the Department or its agent, as if the new person were included in such list.
 - d. Within thirty (30) days following any change in the persons having an ownership interest with respect to CO₂ allowances in the general account, including the addition or deletion of persons, the CO₂ authorized account representative or any 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.
- a. Once a complete application for a general account under § 46.12.2(B)(1) of this Part has been submitted and received, the Department or its agent will rely on the application unless and until a superseding complete application for a general account under § 46.12.2(B)(1) of this Part is received by the Department or its agent.
 - b. Except as provided in §§ 46.12.2(B)(3)(a) and (b) of this Part, no objection or other communication submitted to the Department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO₂ authorized account representative or any 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 Department or its agent under the CO₂ Budget Trading Program.

- c. Neither the Department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO₂ authorized account representative or any 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.

- a. A CO₂ authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Department or its agent provided for under §§ 46.11 and 46.12 of this Part.
- b. An CO₂ authorized alternate account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Department or its agent provided for under §§ 46.11 and 46.12 of this Part.
- c. In order to delegate authority to make an electronic submission to the Department or its agent in accordance with §§ 46.12.2(B)(5)(a) and (b) of this Part, the CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, must submit, to the Department or its agent, a notice of delegation, in a format prescribed by the Department that includes the following elements:
 - (1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) 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 (if any) of each such natural person, herein referred to as “electronic submission agent”;
 - (3) For each such natural person, a list of the types of electronic submissions under §§ 46.12.2(A) or (B) of this Part for which authority is delegated to them; and
 - (4) The following certification statements by such CO₂ authorized account representative or CO₂ authorized alternate account representative:

- (A) “I agree that any electronic submission to the Department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO₂ authorized account representative or CO₂ authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 250-RICR-120-05-46.12.2(B)(5)(d) (CO₂ Budget Trading Program) shall be deemed to be an electronic submission by me.”
- (B) “Until this notice of delegation is superseded by another notice of delegation under 250-RICR-120-05-46.12.2(B)(5)(d) (CO₂ Budget Trading Program), I agree to maintain an e-mail account and to notify the Department or its agent immediately of any change in my e-mail address unless all delegation authority by me under 250-RICR-120-05-46.12.2(B)(5) (CO₂ Budget Trading Program) is terminated.”

- d. A notice of delegation submitted under § 46.12.2(B)(5)(c) of this Part 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 Department or its agent and until receipt by the Department or its agent of a superseding notice of delegation by such CO₂ authorized account representative or 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 § 46.12.2(B)(5)(c)(4)(AA) of this Part and made in accordance with a notice of delegation effective under § 46.12.2(B)(5)(d) of this Part 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.

- 1. The Department or its agent will assign a unique identifying number to each account established under §§ 46.12.2(A) or (B) of this Part.

46.12.3 CO₂ Allowance Tracking System (COATS) responsibilities of CO₂ authorized account representative

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

46.12.4 Recordation of CO₂ allowance allocations

- A. By January 1 of each calendar year, the Department or its agent will record in the Rhode Island Auction/Sale Account, the CO₂ allowances allocated for auction/sale in that year.
- B. By January 1 of each calendar year, the Department or its agent will record in the Voluntary Renewable Energy Market Set-aside Account, the CO₂ allowances allocated for the Voluntary Renewable Energy Market Set-aside in that year.
- C. Serial numbers for allocated CO₂ allowances.
1. When allocating CO₂ allowances to and recording them in an account, the Department or its agent will assign each CO₂ allowance a unique identification number that will include digits identifying the year for which the CO₂ allowance is allocated.

46.12.5 Compliance

- A. Allowances available for compliance deduction.
1. 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 for a control period or an interim control period of § 46.7(A) of this Part.
- a. 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.
- b. The CO₂ allowances are held in the CO₂ budget source's compliance account as of the CO₂ allowance transfer deadline, as defined in § 46.5(A)(22) of this Part, 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 § 46.11.1 of this Part, by the CO₂ allowance transfer deadline for that control period or interim control period.

- c. 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 § 46.7(A) of this Part, for a control period or interim control period may not exceed 3.3 percent (3.3%) of the CO₂ budget source's CO₂ emissions for that control period, or 3.3 percent of 0.50 times the CO₂ budget source's CO₂ emissions for an interim control period, as determined in accordance with §§ 46.12 through 46.14 of this Part.
- d. The CO₂ allowances are not necessary for deductions for excess emissions for a prior control period under § 46.12.5(D) of this Part.

B. Deductions for compliance.

- 1. Following the recordation, in accordance with § 46.11.2 of this Part, 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 Department or its agent will deduct CO₂ allowances available under § 46.12.5(A)(1) of this Part to cover the source's CO₂ emissions (as determined in accordance with §§ 46.13 and 46.14 of this Part) for the control period, or interim control period as follows:
 - a. Until the amount of CO₂ allowances deducted equals the number of tons of total CO₂ emissions (or 0.50 times the number of tons of total CO₂ emissions for an interim control period), less any CO₂ emissions attributable to the burning of eligible biomass, determined in accordance with §§ 46.13 and 46.14 of this Part, from all CO₂ budget units at the CO₂ budget source for the control period or interim control period; or
 - b. If there are insufficient CO₂ allowances to complete the deductions in § 46.12.5(B)(1) of this Part, until no more CO₂ allowances available under § 46.12.5(B)(1)(a) of this Part remain in the compliance account.

C. Identification of available CO₂ allowances by serial number; default compliance deductions.

- 1. The CO₂ authorized account representative for a source's compliance account may request that specific CO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period or interim control period in accordance with §§ 46.12.5(B) or (D) of this Part. Such identification shall be made in the compliance certification report submitted in accordance with § 46.15.1 of this Part.

2. In the absence of an identification or in the case of a partial identification of available CO₂ allowances by serial number, the Department or its agent will deduct CO₂ allowances, for a control period or interim control period, from the CO₂ budget source's compliance account under § 46.12.5(C)(1) of this Part, in the following order:
 - a. First, subject to the relevant compliance deduction limitations under §§ 46.12.5(A)(1)(c) and 46.12.5(D)(1) of this Part, CO₂ offset allowances. CO₂ offset allowances shall be deducted in chronological order (i.e., CO₂ offset allowances from earlier allocation years shall be deducted before CO₂ offset allowances from later allocation years). In the event that some, but not all, CO₂ offset allowances from a particular allocation year are to be deducted, CO₂ offset allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.
 - b. Second, any CO₂ allowances, other than CO₂ offset allowances that are available for deduction under § 46.12.5(A)(1) of this Part, shall be deducted in chronological order (i.e., CO₂ allowances from earlier allocation years shall be deducted before CO₂ allowances from later allocation years). In the event that some, but not all, CO₂ allowances from a particular allocation year are to be deducted, CO₂ allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

D. Deductions for excess emissions.

1. After making the deductions for compliance under § 46.12.5(B) of this Part, the Department or its agent will deduct, from the CO₂ budget source's compliance account, a number of CO₂ allowances, equal to three (3) times the number of the source's excess emissions. In the event that a source has insufficient CO₂ allowances to cover three (3) times the number of the source's excess emissions, the source shall be required to immediately transfer sufficient allowances into its compliance account. No CO₂ offset allowances may be deducted to account for the source's excess emissions.
2. Any CO₂ allowance deduction required under § 46.12.5(D)(1) of this Part shall not affect the liability of the owners and operators of the CO₂ budget source or the CO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

- a. For purposes of determining the number of days of violation, if a CO₂ budget source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered. The Department or its agent will have complete discretion to determine if the owner or operator of the unit demonstrated that a lesser number of days should be considered.
 - b. Each ton of excess emissions is a separate violation.
 - c. For purposes of determining the number of days of violation, if a CO₂ budget source has excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.
 - d. Each ton of excess interim emissions is a separate violation.
3. The propriety of the Department's determination that a CO₂ budget source had excess emissions and the 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 Department or its agent from initially deducting the CO₂ allowances resulting from the Department's original determination that the relevant CO₂ budget source has had excess emissions. Should the Department's determination of the existence or extent of the CO₂ budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the Department shall:
 - a. In any instance where the Department's determination of the extent of excess emissions was too low, the Department will take further action under §§ 46.12.5(D)(1) and (2) of this Part to address the expanded violation.
 - b. In any instance where the Department's determination of the extent of excess emissions was too high, the Department will distribute, to the relevant CO₂ budget source, a number of CO₂ allowances equaling the number of CO₂ allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO₂ budget source's compliance account no longer exist, the CO₂ allowances will be provided to a

general account selected by the owner or operator of the CO₂ budget source from which they were originally deducted.

- E. The Department will record, in the appropriate compliance account, all deductions from such an account pursuant to §§ 46.12.5(B) and (D) of this Part.
- F. Action by the Department on submissions.
 - 1. The Department may review and conduct independent audits concerning any submission under the CO₂ Budget Trading Program and make appropriate adjustments of the information in the submissions.
 - 2. The Department may deduct CO₂ allowances from or transfer CO₂ allowances to a source's compliance account based on information in the submissions, as adjusted under § 46.12.5(F)(1) of this Part.

46.12.6 Banking

- A. 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 §§ 46.11, 46.12.5, 46.12.7, or 46.15.2 of this Part.

46.12.7 Account error

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

46.12.8 Closing of general accounts

- A. A CO₂ authorized account representative of a general account may instruct the Department or its agent to close the account by submitting a statement requesting deletion of the account from the CO₂ Allowance Tracking System (COATS) and by correctly submitting for recordation under § 46.11.1 of this Part, 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 (1) year or more and does not contain any CO₂ allowances, the Department or its agent may notify the CO₂ authorized account representative for the account that the account will be closed in the CO₂ Allowance Tracking System (COATS) thirty (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 Department or its agent receives a correctly submitted transfer of CO₂ allowances into the account under § 46.11.1 of this Part, or a statement submitted by the CO₂ authorized account representative demonstrating, to the satisfaction of the Department or its agent,

good cause as to why the account should not be closed. The Department or its agent will have sole discretion to determine if the CO₂ authorized account representative of the account demonstrated that the account should not be closed.

46.13 Monitoring

46.13.1 General Requirements

- A. The owners and operators, and to the extent applicable, the CO₂ authorized account representative of a CO₂ budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided § 46.13.1 of this Part and all applicable sections of 40 C.F.R. § 75 incorporated in § 46.4(A) of this Part. For purposes of complying with such requirements, the definitions in § 46.5 of this Part and in 40 C.F.R. § 72.2, incorporated in § 46.4 of this Part shall apply, and the terms “affected unit,” “designated representative,” and “continuous emissions monitoring system” (or “CEMS”) in 40 C.F.R. § 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 § 46.5 of this Part.
1. Requirements for installation, certification, and data accounting. The owner or operator of each CO₂ budget unit must meet the following requirements.
 - a. Install all monitoring systems required under § 46.13.1 for monitoring CO₂ mass emissions. This includes all systems required to monitor CO₂ concentration, stack gas flow, O₂ concentration, heat input, and fuel flow rate, as applicable, in accordance with 40 C.F.R §§ 75.13, 75.71, and 75.72 and all portions of appendix G of 40 C.F.R. § 75, except for in 40 C.F.R. § 75, equation G-1, incorporated in § 46.4 of this Part. 40 C.F.R. § 75. Equation G-1 in Appendix G, incorporated in § 46.4 of this Part shall not be used to determine CO₂ emissions under this Part.
 - b. Record, report and quality-assure the data from the monitoring systems under § 46.13.1(A)(1)(a) of this Part.

46.14 Recordkeeping and Reporting

46.14.1 General requirements

- A. The CO₂ authorized account representative shall comply with all recordkeeping and reporting requirements in this Section, the applicable record keeping and reporting requirements under 40 C.F.R. § 75.73 incorporated in § 46.4(A) of this Part and with the requirements of § 46.9.1(E) of this Part.

46.14.2 Monitoring plans

- A. The owner or operator of a CO₂ budget unit shall submit a monitoring plan in the manner prescribed in 40 C.F.R. § 75.62 incorporated in § 46.4(A) of this Part.

46.14.3 Certification applications

- A. The CO₂ authorized account representative shall submit an application to the Department or its agent within forty-five (45) days after completing all CO₂ monitoring system initial certification or recertification tests required under 40 C.F.R. § 75.63 and 40 C.F.R. § 75.53(g and (h), incorporated in § 46.4(A) of this Part.

46.14.4 Quarterly reports

- A. 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 to the Administrator and the Department, in an electronic format prescribed by the Administrator, unless otherwise prescribed by the Administrator, and the Department, for each calendar quarter beginning with:
 - a. For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009, through March 31, 2009; or
 - b. 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 § 46.13.2(B) of this Part 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 Department or its agent within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 C.F.R. § 75 Subpart H incorporated in § 46.4(A) of this Part, and 40 C.F.R. § 75.64 incorporated in § 46.4(A) of this Part. 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 40 C.F.R. § 75, Subpart G, incorporated in § 46.4(A) of this Part, except for opacity, heat input, NO_x and SO₂ provisions.

3. Compliance certification - The CO₂ authorized account representative shall submit, to the Department or its agent, a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:
 - a. The monitoring data submitted were recorded in accordance with the applicable requirements of §§ 46.13 and 46.14 of this Part and 40 C.F.R. § 75 incorporated in § 46.4(A) of this Part, including the quality assurance procedures and specifications;
 - b. For a unit with add-on CO₂ emissions controls and for all hours where data are substituted in accordance with 40 C.F.R. § 75.34(a)(1) incorporated in § 46.4(A) of this Part, the add-on emissions controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 C.F.R. § 75, Appendix B incorporated in § 46.4(A) of this Part and the substitute values do not systematically underestimate CO₂ emissions; and
 - c. The CO₂ concentration values substituted for missing data under 40 C.F.R. § 75, Subpart D do not systematically underestimate CO₂ emissions.

46.14.5 Petitions

- A. Except as provided in § 46.14.5(C) of this Part, 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 C.F.R. § 75.66 and to the Department requesting approval to apply an alternative to any requirement of 40 C.F.R. § 75. Application of an alternative to any requirement of 40 C.F.R. § 75 is in accordance with §§ 46.13 and 46.14 of this Part only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department or its agent.
- 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 C.F.R. § 75.66 and to the Department or its agent requesting approval to apply an alternative to any requirement of 40 C.F.R. § 75. Application of an alternative to any requirement of 40 C.F.R. § 75 is in accordance with §§ 46.13 and 46.14 of this Part, only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department or its agent.

2. In the event that the Administrator declines to review a petition under 40 C.F.R § 75.66 as described in § 46.14.5(B)(1) of this Part, the CO₂ authorized account representative of a CO₂ budget unit that is not subject to an Acid Rain emissions limitation may submit a petition to the Department or its agent requesting approval to apply an alternative to any requirement in §§ 46.13 and 46.14 of this Part. That petition shall contain all the relevant information specified in 40 C.F.R. § 75.66. Application of an alternative to any requirement in §§ 46.13 and 46.14 of this Part, is in accordance with §§ 46.13 and 46.14 of this Part, only to the extent that the petition is approved in writing by the Department or its agent.
- 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 C.F.R. § 75.66 and to the Department or its agent requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 C.F.R. § 75.72 or a CO₂ concentration CEMS used under 40 C.F.R. § 75.71(a)(2). Application of an alternative to any such requirement is in accordance with §§ 46.14 and 46.15 of this Part, only to the extent the petition is approved in writing by the Administrator, and subsequently approved in writing by the Department or its agent.

46.14.6 CO₂ budget units that co-fire eligible biomass

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

7. For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, the dry basis higher heating value, in MMBtu per dry pound.
8. For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, the total dry basis eligible biomass fuel input, in pounds, calculated in accordance with § 46.14.6(B) of this Part.
9. The total amount of CO₂ emitted from the CO₂ budget unit due to firing eligible biomass fuel, in tons, calculated in accordance with § 46.14.6(C) of this Part.
10. For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, the total eligible biomass fuel heat input in MMBtu, calculated in accordance with § 46.14.6(D)(1) of this Part.
11. The total amount of heat input to the CO₂ budget unit due to firing eligible biomass fuel in MMBtu, calculated in accordance with § 46.14.6(D)(2) of this Part.
12. Description and documentation of monitoring technology employed, and description and documentation of fuel sampling methodology employed, including sampling frequency; and
13. For each distinct type of eligible biomass fuel fired at the CO₂ budget unit, chemical analysis, including heating value and carbon content.

B. An owner or operator of a CO₂ budget unit shall calculate and submit, to the Department or its agent, on a quarterly basis, the total dry weight for each distinct type of eligible biomass fired by the CO₂ budget unit during the reporting quarter. The total dry weight shall be determined for each fuel type as follows:

1. For solid fuel types:

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

Where:

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

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

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

i = fired fuel shipment;

j = fuel type; and,
m = number of shipments.

2. For gaseous fuel types:

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

Where:

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

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

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

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

J = fuel type

C. CO₂ emissions due to firing of eligible biomass shall be determined as follows:

1. For any full calendar quarter during which no fuel other than eligible biomass is combusted at the CO₂ budget unit, as measured and recorded in accordance with this Section and §§ 46.13 and 46.14 of this Part; or
2. For any full calendar quarter during which fuels, other than eligible biomass, are combusted at the CO₂ budget unit, as determined using the following equation:

$$CO_2 \text{ tons} = \sum_{j=1}^n F_j \times C_j \times O_j \times \frac{44}{12} \times 0.0005$$

Where:

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

F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated in § 46.14.6(B);

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

O_j = Oxidation factor for eligible biomass fuel type j, derived for solid fuels based on the ash content of the eligible biomass fired and the carbon content of this ash, as determined pursuant to § 46.14.6(A)(12);

for gaseous eligible biomass fuels, a default oxidation factor of 0.995 may be used;

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

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

j = fuel type; and

n = number of distinct fuel types.

D. Heat input due to firing of eligible biomass for each quarter shall be determined as follows:

1. For each distinct fuel type:

$$H_j = F_j \times HHV_j$$

Where:

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

F_j = Total eligible biomass dry basis fuel input (lbs) for fuel type j , as calculated in § 46.14.6(B);

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

j = fuel type.

2. For all fuel types:

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

Where:

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

j = fuel type; and

n = number of distinct fuel types.

- E. Fuel sampling methods and fuel sampling technology shall be consistent with the New York State Renewable Energy Standard Biomass Power Guide, June 2018 incorporated in § 46.4(B) of this Part.

46.14.7 Additional requirements to provide output data

- A. A CO₂ budget source shall submit to the Department or its agent a method for quantification of net electrical output.
- B. CO₂ budget sources selling steam should use billing meters to determine net steam output. A CO₂ budget source whose steam output is not measured by billing meters or whose steam output is combined with output from a unit that is not a CO₂ budget unit prior to measurement by the billing meter shall propose, to the Department or its agent, an alternative method for quantification of net steam output. If data for steam output is not available, the CO₂ budget source may report heat input providing useful steam output as a surrogate for steam output.
- C. Monitoring - The owner or operator of each CO₂ budget unit shall submit an output monitoring plan. The output monitoring plan must include a description and diagram as stated below:
 - 1. Submit a diagram of the electrical and/or steam system for which output is being monitored, specifically including the following:
 - a. If the CO₂ budget unit monitors net electric output, the diagram should contain all CO₂ budget unit and all generators served by each CO₂ budget unit and the relationship between CO₂ budget units and generators. If a generator served by a CO₂ budget unit is also served by a unit that is not a CO₂ budget unit, the unit that is not a CO₂ budget unit and its relationship to each generator should be indicated on the diagram as well. The diagram should indicate where the net electric output is measured and should include all electrical inputs and outputs to and from the plant. If net electric output is determined using a billing meter, the diagram should show each billing meter used to determine net sales of electricity and should show that all electricity measured at the point of sale is generated by the CO₂ budget units.
 - b. If the CO₂ budget unit monitors net thermal output, the diagram should include all steam or hot water coming into the net steam system, including steam from CO₂ budget units and units that are not CO₂ budget units, and all exit points of steam or hot water from the net steam system. In addition, each input and output stream will have an estimated temperature, pressure and phase indicator, and an enthalpy in Btu/lb. The diagram of the net steam system should identify all useful loads, house loads, parasitic loads, any other steam loads and all boiler feedwater returns. The diagram will

represent all energy losses in the system as either usable or unusable losses. The diagram will also indicate all flow meters, temperature or pressure sensors or other equipment used to calculate gross thermal output. If a sales agreement is used to determine net thermal output, the diagram should show the monitoring equipment used to determine the sales of steam.

2. Submit a description of each output monitoring system. The description of the output monitoring system should include a written description of the output system and the equations used to calculate output. For net thermal 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 § 46.14.7(E) of this Part.
4. Submit documentation supporting any output value(s) to be used as a missing data value should there be periods of invalid output data. The missing data output value must be either zero or an output value that is likely to be lower than a measured value and that is approved as part of the monitoring plan required under this Subsection.

D. Initial certification - A certification statement must be submitted by the CO₂ authorized account representative stating that either the output monitoring system consists entirely of billing meters or that the output monitoring system meets one of the accuracy requirements for non-billing meters in § 46.14.7(D)(2) of this Part. This statement may be submitted with the certification application required under § 46.14.3 of this Part.

1. Billing meters - The billing meter shall record the electric or thermal output. Any electric or thermal output values that the facility reports must be the same as the values used in billing for the output. Any output measurement equipment used as a billing meter in commercial transactions requires no additional certification or testing.
2. Non-billing meters - For non-billing meters, the output monitoring system shall either meet an accuracy of within ten percent (10%) of the reference value, or each component monitor for the output system must meet an accuracy of within three percent (3%) of the full-scale value, whichever is less stringent.
 - a. System approach to accuracy.
 - (1) The system approach to accuracy must include a determination of how the system accuracy of ten percent (10%) is achieved using the individual components in the system and should include data loggers and any wattmeters

used to calculate the final net electric output data and/or any flowmeters for steam or condensate, temperature measurement devices, absolute pressure measurement devices, and differential pressure devices used for measuring thermal energy.

b. Component approach to accuracy.

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

E. Ongoing QA/QC. The following ongoing quality assurance/quality control activities must be performed in order to maintain the output system:

1. Billing meters.

- a. 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.

- a. 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 (2) years (i.e., every eight (8) 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 ten percent (10%) of the reference value, or each component monitor for the output system must meet an accuracy of within three percent (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 three percent (3%) of the full-scale value, then the equipment should be repaired or replaced to meet that requirement.

3. Out-of-control periods.

- a. 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 § 46.14.7(C) of this Part.

F. Recordkeeping and reporting

1. General provisions.

- a. The CO₂ authorized account representative shall comply with all recordkeeping and reporting requirements in this Section and with the requirements of §§ 46.7(C) and 46.9.1(E) of this Part.

2. Recordkeeping.

- a. Facilities shall retain data used to monitor, determine, or calculate net generation for ten (10) years from the date reported.

3. Annual reports.

- a. 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 Department or its agent. The annual report shall include the annual total unit level MWh, all useful steam output and a certification statement from the CO₂ authorized account representative stating the following:

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

46.15 Compliance Certification

46.15.1 Compliance certification report

- A. Applicability and deadline. - For each control period in which a CO₂ budget source is subject to the CO₂ requirements of § 46.7(A) of this Part, the CO₂ authorized account representative of the source shall submit, to the Department or its agent, by the March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.
- B. Contents of report - The CO₂ authorized account representative shall include in the compliance certification report under § 46.15.1(A) of this Part the following elements, in a format prescribed by the Department:
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 § 46.12.5 of this Part, for the control period, including the serial numbers of any CO₂ offset allowances that are to be deducted subject to the limitations of § 46.12.5(A)(1)(c) of this Part; and
 3. The compliance certification under § 46.15.1(C) of this Part.
- C. Compliance certification - In the compliance certification report under § 46.15.1(A) of this Part, the CO₂ authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO₂ budget units at the source in compliance with the CO₂ Budget Trading Program, whether the source and each CO₂ budget unit for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO₂ Budget Trading Program, applicable to the unit, including:
1. Whether the source was operated in compliance with the CO₂ requirements of § 46.7(A) of this Part;
 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 §§ 46.13 and 46.14 of this Part;
 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 §§ 46.13 and 46.14 of this Part. 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 §§ 46.13 and 46.14 of this Part, of each monitor at each unit at the source, or for using an accepted monitoring method or alternative monitoring method approved under §§ 46.13 and 46.14 of this Part, if any, have changed; and
5. If a change is required to be reported under § 46.15.1(C)(4) of this Part, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

46.15.2 Department's action on compliance certifications

- A. The Department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO₂ Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.
- B. The Department or its agent may deduct CO₂ allowances from or transfer CO₂ allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under § 46.15.2(A) of this Part.

46.16 Repealed

46.17 Repealed

46.18 Duty to Comply

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

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TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 120 - AIR RESOURCES

SUBCHAPTER 05 - AIR POLLUTION CONTROL

PART 46 - AIR POLLUTION CONTROL REGULATION NO. 46, 'CO2 BUDGET TRADING PROGRAM'

Type of Filing: Amendment

Agency Signature

Agency Head Signature

Agency Signing Date

Department of State

Regulation Effective Date

Department of State Initials

Department of State Date