

**TRANSPORTATION AND CLIMATE  
INITIATIVE PROGRAM**

**Model Rule**

**June 10, 2021**

## A Note to the Reader

The Transportation and Climate Initiative (TCI-P) is a multijurisdictional program composed of individual programs adopted and implemented under the regulations of each participating jurisdiction. The TCI-P “Model Rule” serves as a common framework that each participating jurisdiction will use to develop its own regulations.

The Model Rule accommodates the varying nomenclature and rulemaking requirements of participating jurisdictions, and uses the following formatting conventions or “placeholders” to indicate where language may be modified to adopt and implement the rule in each jurisdiction.

Text in ALL CAPITAL LETTERS is used as a placeholder for the name of a participating jurisdiction or the administrative agencies within that jurisdiction. For example, in Massachusetts’ TCI-P Rule, the term “JURISDICTION fuel supplier” will be replaced with “Massachusetts fuel supplier”.

Text that is in **[brackets and bold]** is used to identify a possible approach that a jurisdiction may take to implement the TCI-P pursuant to its own unique authority or as a placeholder for unique language from each participating jurisdiction.

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## **Part XX: TRANSPORTATION AND CLIMATE INITIATIVE PROGRAM**

### **Subpart XX-1      General Provisions**

#### **XX-1.1      Purpose.**

**[Each participating jurisdiction may codify statement of purpose language as appropriate. Below is an example of one possible approach.]**

This Part establishes the JURISDICTION component of the Transportation and Climate Initiative Program (TCI-P), which is designed to:

- (a) Reduce carbon dioxide (CO<sub>2</sub>) emissions from the transportation sector;
- (b) Improve air quality and public health, increase resilience to the impacts of climate change, and provide more affordable access to clean transportation choices;
- (c) Promote local economic opportunity and create high quality jobs;
- (d) Maximize the efficiency of the multijurisdictional program to ensure greater benefits; and
- (e) Advance equity for communities overburdened by pollution and underserved by the transportation system, including expanding low-carbon and clean mobility options in urban, suburban, and rural communities, particularly for populations and communities that are disproportionately adversely affected by climate change and transportation pollution and currently underserved by the transportation system.

#### **XX-1.2      Definitions.**

*Account Number.* The number given by the REGULATORY AGENCY or its agent to each Transportation Emissions and Allowance Tracking System (TREATS) account.

*Adverse verification statement.* A verification statement rendered by a verification body attesting that the verification body cannot say with reasonable assurance that the CO<sub>2</sub> emissions data reports are free of material misstatement or attesting that the CO<sub>2</sub> emission data reports contain correctable errors and thus are not in conformance with the requirement to fix such errors.

*Allocate or Allocation.* The determination by the REGULATORY AGENCY of the number of CO<sub>2</sub> allowances to be recorded in an Allowance Tracking Sub-system account.

*Allocation year.* A calendar year for which the REGULATORY AGENCY allocates or awards CO<sub>2</sub> allowances pursuant to Subpart XX-5 or XX-10. The allocation year of each CO<sub>2</sub> allowance is reflected in the serial number given to the CO<sub>2</sub> allowance pursuant to subdivision XX-6.4(b).

*Allowance auction or Auction.* An auction in which the REGULATORY AGENCY offers CO<sub>2</sub> allowances for sale pursuant to Subpart XX-11.

*Allowance Tracking Sub-system (ATS).* A component of the TREATS by which the REGULATORY AGENCY or its agent records allocations, deductions, and transfers of CO<sub>2</sub> allowances. The ATS may also be used to track offset projects and allowance prices.

*Auction Notice.* An announcement and release of information related to an upcoming CO<sub>2</sub> allowance auction that occurs no later than 45 days prior to the date upon which each auction is conducted.

*Aviation gasoline.* A complex mixture of relatively volatile hydrocarbons, with or without small quantities of additives, blended to form a fuel suitable for use in aviation reciprocating engines and meeting ASTM Specification D910 or Military Specification

MIL-G-5572.

*Award.* The determination by the REGULATORY AGENCY of the number of CO<sub>2</sub> offset allowances to be recorded in the general account of a project sponsor pursuant to section XX-10.7. Award is a type of allocation.

*Below-the-rack distributor or Distributor.* An owner of transportation fuel at the time such fuel is delivered for final sale or consumption in JURISDICTION.

*Bidder.* An entity qualified, pursuant to this Part, to participate in a CO<sub>2</sub> allowance auction.

*Business day.* Any day that is not a Saturday, Sunday, or Federal holiday.

*CO<sub>2</sub> allowance.* A limited authorization by the REGULATORY AGENCY or a participating JURISDICTION under the TCI-P to emit up to one metric ton of CO<sub>2</sub>, subject to all applicable limitations contained in this Part.

*CO<sub>2</sub> allowance deduction or Deduct CO<sub>2</sub> allowances.* The permanent withdrawal of CO<sub>2</sub> allowances by the REGULATORY AGENCY or its agent from a compliance account to account for the CO<sub>2</sub> emissions for a control period or an interim control period, determined in accordance with Subparts XX-6, XX-8, and XX-9, or for the forfeit or retirement of CO<sub>2</sub> allowances as provided by this Part.

*CO<sub>2</sub> allowances held or Hold CO<sub>2</sub> allowances.* The CO<sub>2</sub> allowances recorded by the REGULATORY AGENCY or its agent, or submitted to the REGULATORY AGENCY or its agent for recordation, in accordance with Subparts XX-6 and XX-7, in a TREATS account.

*CO<sub>2</sub> allowance transfer deadline.* Midnight of the July 1 occurring after the end of the relevant control period and each relevant interim control period or, if that July 1 is not a



business day, midnight of the first business day thereafter and is the deadline by which CO<sub>2</sub> allowances must be submitted for recordation in a JURISDICTION fuel supplier's compliance account in order to meet the CO<sub>2</sub> requirements of subdivision XX-1.5(b) for the control period and each interim control period immediately preceding such deadline.

*CO<sub>2</sub> authorized account representative.* The natural person who is authorized by the JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, in accordance with Subpart XX-2, to represent and legally bind them in matters pertaining to this Part or, for a general account, the natural person who is authorized, under Subpart XX-6, to transfer or otherwise dispose of CO<sub>2</sub> allowances held in the general account.

*CO<sub>2</sub> authorized alternate account representative.* The alternate natural person who is authorized by the JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, in accordance with Subpart XX-2, to represent and legally bind them in matters pertaining to this Part or, for a general account, the alternate natural person who is authorized, under Subpart XX-6, to transfer or otherwise dispose of CO<sub>2</sub> allowances held in the general account.

*CO<sub>2</sub> budget emissions limitation.* For a JURISDICTION fuel supplier, the metric tonnage equivalent, in CO<sub>2</sub> emissions in a control period or an interim control period, of the CO<sub>2</sub> allowances available for compliance deduction under subdivision XX-6.5(a) for the JURISDICTION fuel supplier for a control period or an interim control period.

*CO<sub>2</sub> cost containment reserve allowance or CO<sub>2</sub> CCR allowance.* A CO<sub>2</sub> allowance that is offered for sale at an auction by the REGULATORY AGENCY for the purpose of containing the cost of CO<sub>2</sub> allowances. CO<sub>2</sub> CCR allowances offered for sale at an auction are separate from and additional to CO<sub>2</sub> allowances allocated from the JURISDICTION TCI-P base budgets. CO<sub>2</sub> CCR allowances are subject to all applicable limitations contained in this Part.

*CO<sub>2</sub> cost containment reserve trigger price or CCR trigger price.* The CCR trigger price is the minimum price at which CO<sub>2</sub> CCR allowances are offered for sale by the REGULATORY AGENCY at an auction. The CCR trigger price shall be \$12.00 per CO<sub>2</sub> allowance in calendar year 2023. Each calendar year thereafter, the CCR trigger price shall be as shown in Table 1.

Table 1. CO<sub>2</sub> CCR Trigger Price

2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
\$12.00	\$13.43	\$15.02	\$16.81	\$18.80	\$21.04	\$23.54	\$26.34	\$28.19	\$30.16

*CO<sub>2</sub> emissions.* Metric tons of CO<sub>2</sub> released to the atmosphere from the combustion of transportation fuel as calculated pursuant to Subparts XX-8 and XX-9 based on the quantity of transportation fuel disbursed or delivered for final sale or consumption in JURISDICTION.

*CO<sub>2</sub> emissions containment reserve allowance or CO<sub>2</sub> ECR allowance.* A CO<sub>2</sub> allowance that is withheld from sale at an auction by the REGULATORY AGENCY for the purpose of additional CO<sub>2</sub> emission reductions in the event of lower than anticipated CO<sub>2</sub> emission reduction costs.

*CO<sub>2</sub> emissions containment reserve trigger price or ECR trigger price.* The price below which CO<sub>2</sub> allowances will be withheld from sale by the REGULATORY AGENCY at an auction. The ECR trigger price in calendar year 2023 shall be \$6.50. Each calendar year thereafter, the ECR trigger price shall be as shown in Table 2.

Table 2. CO<sub>2</sub> ECR Trigger Price

2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
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\$6.50	\$6.98	\$7.51	\$8.07	\$8.66	\$9.29	\$9.97	\$10.68	\$11.47	\$12.30
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*CO<sub>2</sub> emissions data report.* The quarterly report that each JURISDICTION fuel supplier must submit to the REGULATORY AGENCY or its agent in accordance with sections XX-8.1, XX-8.2, and XX-9.2.

*CO<sub>2</sub> excess emissions.* Any metric tonnage of CO<sub>2</sub> emissions during a control period that exceeds the CO<sub>2</sub> budget emissions limitation for the JURISDICTION fuel supplier.

*CO<sub>2</sub> excess interim emissions.* Any metric tonnage of CO<sub>2</sub> emissions during an interim control period multiplied by 0.50 that exceeds the CO<sub>2</sub> budget emissions limitation for the JURISDICTION fuel supplier.

*CO<sub>2</sub> offset allowance.* A CO<sub>2</sub> allowance that is awarded to the sponsor of a CO<sub>2</sub> emissions offset project pursuant to section XX-10.7, or a corresponding regulation of another participating jurisdiction, and is subject to the relevant compliance deduction limitations of paragraph XX-6.5(a)(3).

*Compliance account.* An Allowance Tracking Sub-System account, established by the REGULATORY AGENCY or its agent for a JURISDICTION fuel supplier under Subpart XX-6, that holds CO<sub>2</sub> allowances available for use by the JURISDICTION fuel supplier for a control period and each interim control period for the purpose of meeting the requirements of subdivision XX-1.5(b).

*Compliance deduction.* Deduction of CO<sub>2</sub> allowances in a compliance account in order for a JURISDICTION fuel supplier to comply with the CO<sub>2</sub> requirements of subdivision XX-1.5(b).

*Conflict of interest.* A situation in which, because of financial or other activities or relationships with other entities, an entity is unable or potentially unable to render an impartial verification statement of a potential or existing client's CO<sub>2</sub> emissions data

reports, or the entity's objectivity in performing verification services is or might be otherwise compromised.

*Conservative missing data parameter.* A data element substituted for missing data and known to result in reported CO<sub>2</sub> emissions that are at least as large as the amount of CO<sub>2</sub> emissions that actually occurred. For example, if the fuel quantity for a shipment is not known because it is not legible on a shipping document or because there is a discrepancy between the records of the position holder and the records of a below-the-rack distributor, a conservative missing data parameter for the fuel volume would be, at least, the maximum volume of fuel the vehicle that transported the fuel can hold.

*Control period.* A three-calendar-year time period.

The first control period is from January 1, 2023 to December 31, 2025, inclusive. Each subsequent sequential three-calendar-year period is a separate control period. The first two calendar years of each control period are each defined as an interim control period.

*Conventional blendstock for oxygenate blending (CBOB).* A petroleum product that, when blended with a specified type and percentage of oxygenate, is motor gasoline that is not certified to meet the requirements for reformulated gasoline in regulations promulgated by the U.S. Environmental Protection Agency under 40 CFR § 1090.220, as that section existed on December 4, 2020.

*Correctable errors.* Errors identified by the verification team that affect CO<sub>2</sub> emissions data in the submitted CO<sub>2</sub> emissions data reports and that result from a nonconformance with the requirements of this Part. Differences that, in the professional judgment of the verification team, are the result of differing but reasonable methods of truncation or rounding or averaging, where a specific procedure is not prescribed by this Part, are not considered errors and therefore do not require correction.

*Deliver for final sale or consumption in JURISDICTION or Deliver to JURISDICTION.* Deliver transportation fuel to a filling station in JURISDICTION.

*Disburse.* With respect to a position holder, to cause the physical transfer of transportation fuel from a terminal at a rack.

*Disburse for final sale or consumption in JURISDICTION or Disburse to JURISDICTION.* Disburse transportation fuel that will be delivered for final sale or consumption in JURISDICTION, as reflected in the records of the terminal operator or in the shipping document issued at the time of disbursement. If a disbursing position holder becomes aware, not later than the last day of the month of a disbursement, that a shipping document for the disbursement was corrected to correct the destination jurisdiction to JURISDICTION, the position holder has the option of treating the corrected document as the shipping document accompanying the disbursed fuel shipment and JURISDICTION as the destination. If, in the records or shipping document, the destination jurisdiction is, or the destination address is located in, JURISDICTION, the fuel shall be treated as disbursed to JURISDICTION unless the shipping document demonstrates that the fuel will be delivered for storage at a facility or portion of a facility that is not a filing station.

*Emissions Tracking Sub-system (ETS).* A component of the TREATS by which the REGULATORY AGENCY or its agent tracks reported fuel shipment data and facilitates CO<sub>2</sub> emissions reporting by, for example:

- (1) Accepting fuel shipment data;
- (2) Sorting submitted fuel shipment data, such as by jurisdiction or JURISDICTION fuel supplier;
- (3) Creating draft distributor fuel shipment data reports and notifications using data from position holder reports;
- (4) Identifying discrepancies among fuel shipment data reports;
- (5) Creating draft CO<sub>2</sub> emissions data reports based on shipping document data;
- (6) Allowing for the electronic submission and certification of monthly fuel

- shipment data and CO<sub>2</sub> emissions data reports;
- (7) Managing accounts and users, including cases in which the same entity is the position holder and the distributor for a shipment and cases in which the same natural person is an electronic submission agent for multiple reporting entities; and
  - (8) Facilitating the efficient completion of other administrative tasks.

*Entity.* A natural person, firm, association, partnership, business trust, corporation, limited liability company, company, government agency, or any other form of organization.

*Filling station.* Any facility or portion of a facility or vehicle from which transportation fuel is transferred into the fuel tank of a motor vehicle or other portable fuel tank. A filling station includes any temporary storage (at the facility or portion of the facility or in the vehicle) dedicated to holding that transportation fuel before such transfer.

*Fuel shipment data report.* The monthly report that each JURISDICTION fuel supplier must submit, and each reporting-only entity must or may submit, as applicable, to the REGULATORY AGENCY or its agent in accordance with section XX-8.3.

*Full verification.* All verification services specified in subdivisions XX-9.2(b) and (c) for verification of a JURISDICTION fuel supplier's CO<sub>2</sub> emissions data report(s).

*General account.* An account in the Allowance Tracking Sub-system, established by the REGULATORY AGENCY or its agent under Subpart XX-6, that is not a compliance account.

*Highway vehicle.* Any vehicle self-propelled by motor and designed to carry a load over public highways, whether or not also designed to perform other functions, except if the vehicle is specially designed mobile machinery for non-transportation functions or specially designed for off-highway transportation.

*Identification number.* The federal tax identification number, employer identification number (EIN), or other unique number, as specified by the REGULATORY AGENCY.

*Interim control period.* A one-calendar-year time period, during each of the first and second calendar years of each three-calendar-year control period. The first interim control period starts on January 1, 2023 and ends on December 31, 2023, inclusive. The second interim control period starts on January 1, 2024 and ends on December 31, 2024, inclusive. Each successive three-calendar-year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

*Jurisdiction.* A state, a Commonwealth, the District of Columbia, or other Territories of the United States.

*JURISDICTION fuel supplier.* An entity that is:

- (1) A position holder that on or after January 1, 2022:
  - i. Disburses transportation fuel to JURISDICTION from a reporting terminal, except as provided in subparagraph XX-8.1(b)(1)(i); or
  - ii. Disburses transportation fuel to JURISDICTION from a terminal that is not a reporting terminal and receives a notification that the fuel was delivered for final sale or consumption in JURISDICTION;  
or
- (2) A below-the-rack distributor that on or after January 1, 2022 is an owner of transportation fuel at the time such fuel is delivered for final sale and consumption in JURISDICTION, provided that the fuel:
  - i. Was disbursed to a jurisdiction other than JURISDICTION; or
  - ii. Was transported to JURISDICTION from another country by a means other than pipeline or waterborne vessel; or
  - iii. Was stored after disbursement at a location in the United States that is not a terminal; or

- iv. Was disbursed to JURISDICTION from a terminal that is not a reporting terminal and for which no notification is provided to the position holder that disbursed the fuel.

*JURISDICTION Transportation and Climate Initiative Program.* The regulation that JURISDICTION promulgated to implement its individual Transportation and Climate Initiative Program, namely, this Part.

*Less intensive verification.* The verification services specified in subdivisions XX-9.2(b) and (c) that may be provided for calendar years between full verifications if the verifier can provide findings with a reasonable level of assurance. Such services are not required to include site visits and only require data checks and document reviews of the JURISDICTION fuel supplier's CO<sub>2</sub> emissions data reports based on the analysis and risk assessment in the most current sampling plan developed as part of the most current full verification.

*Material misstatement.* Any discrepancy, omission, misreporting, or aggregation of the three, identified in the course of verification services, that leads a verification team to believe that the total reported CO<sub>2</sub> emissions for a calendar year contain errors greater than 5% in the CO<sub>2</sub> emissions data reports for the calendar year.

*Member.* For the purposes of section XX-9.4, any employee or subcontractor of a verification body or related entities of the verification body and any individual with majority equity share in the verification body or its related entities.

*Metric tonnage.* The sum of all CO<sub>2</sub> emissions required to be reported under Subparts XX-8 and XX-9 for a control period or interim control period, provided that any remaining fraction of a metric ton of CO<sub>2</sub> emissions equal to or greater than 0.50 metric ton shall be deemed to equal one metric ton of CO<sub>2</sub> emissions and any fraction of a metric ton of CO<sub>2</sub> emissions less than 0.50 metric ton shall be deemed to equal zero metric tons of CO<sub>2</sub> emissions. A metric ton equals 1,000 kilograms or 2,204.62 pounds.



*Minimum reserve price.* The minimum reserve price in calendar year 2023 shall be \$2.76. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

*Motor gasoline.* Any fuel, except for aviation gasoline, that:

- (1) Is commonly or commercially known as gasoline, including blendstocks CBOB and RBOB;
- (2) Is intended or used to power a vehicle or engine designed to operate on gasoline; or
- (3) Conforms to the specifications of ASTM D4814 and is made available for use in a vehicle or engine designed to operate on gasoline.

*Net fuel quantity.* Liquid product measured in U.S. gallons corrected to a temperature of 60° Fahrenheit or 15° Celsius and to a pressure of 14.7 pounds per square inch (psi) (i.e., net gallons).

*Nonconformance.* The failure to use the methods or emission factors specified in this Part to calculate CO<sub>2</sub> emissions or the failure to meet any other requirements of this Part.

*Notification.* A submission by a below-the-rack distributor informing a position holder that transportation fuel disbursed to JURISDICTION by the position holder is delivered for final sale or consumption in JURISDICTION.

*On-road diesel fuel.* Any fuel that is delivered to a filling station for use in a diesel-powered highway vehicle and:

- (1) Is commonly or commercially known as diesel fuel;
- (2) Is intended or used to power a vehicle or engine that is designed to operate using diesel fuel; or

- (3) Conforms to the specifications of ASTM D975 and is made available for use in a vehicle or engine designed to operate using diesel fuel.

*Operator.* An entity, including an owner, having operational control of a position holder, below-the-rack distributor, terminal operator, or other entity.

*Owner.*

- (1) *Owner of an entity.* An entity that owns a position holder, below-the-rack distributor, terminal operator, or other entity.
- (2) *Owner of a general account.* An entity that has an ownership interest with respect to any CO<sub>2</sub> allowances held in the general account and that is subject to the binding agreement for the CO<sub>2</sub> authorized account representative to represent that entity in accordance with Subpart XX-6.
- (3) *Owner of transportation fuel.* An entity that holds an ownership interest in transportation fuel.

*Participating jurisdiction.* A jurisdiction that has established a consistent regulation as part of the TCI-P in accordance with that jurisdiction's independent legal authority.

*Position holder.* An owner of transportation fuel at a terminal as reflected in the records of the terminal operator.

*Positive verification statement.* A verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the CO<sub>2</sub> emissions data in the CO<sub>2</sub> emissions data reports are free of material misstatement and conform to the requirements of this Part.

*Qualified positive verification statement.* A verification statement rendered by a verification body attesting that the verification body can say with reasonable assurance that the CO<sub>2</sub> emissions data reports are free of material misstatement and do not contain any correctable errors, in conformance with the requirement to fix such errors,

but may include one or more other nonconformances with the requirements of this Part that do not result in a material misstatement.

*Quarter.* One of the four three-month periods that make up a calendar year, i.e., January through March, April through June, July through September, or October through December.

*Reasonable assurance.* A high degree of confidence that submitted data and statements are valid.

*Rack.* A mechanism capable of removing transportation fuel from a terminal into a means of transport other than pipeline or waterborne vessel.

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

*Recordation, Record, or Recorded.* With regard to CO<sub>2</sub> allowances, the movement of CO<sub>2</sub> allowances by the REGULATORY AGENCY or its agent from one Allowance Tracking Sub-system account to another, for purposes of allocation, transfer, or deduction.

*Reformulated blendstock for oxygenate blending (RBOB).* A petroleum product that, when blended with a specified type and percentage of oxygenate, is motor gasoline that is certified to meet the requirements for reformulated gasoline under, and meets each of the standards and requirements in, regulations promulgated by the U.S. Environmental Protection Agency under 40 CFR §§1090.220 and 1090.1000(b), as those sections existed on December 4, 2020.

*Related entity.* For the purposes of section XX-9.4, any direct parent company, direct subsidiary, or sister company.

*Reporting account.* An Emissions Tracking Sub-System account, established by the REGULATORY AGENCY or its agent for a JURISDICTION fuel supplier or reporting-only entity under Subpart XX-6, that holds CO<sub>2</sub> emissions data reports, fuel shipment data reports, and other information submitted under this Part and that, for the JURISDICTION fuel supplier, holds information on its CO<sub>2</sub> emissions from the combustion of fossil fuel determined in accordance with Subparts XX-8 and XX-9.

*Reporting terminal.* A terminal that is:

- (1) Located in JURISDICTION; or
- (2) Not located in JURISDICTION and whose operator elects to comply with the requirements of this Part applicable to operators of terminals located in JURISDICTION and submits a complete account certificate of representation under section XX-2.4 with respect to such terminal. Once the operator of a terminal not located in JURISDICTION submits such complete account certificate of representation, that terminal is a reporting terminal on the first day of the month following the submittal of such account certificate of representation, and any operator of the terminal must comply with the requirements of this Part for that month and all subsequent months.

*Reporting-only entity.* An entity that is not a JURISDICTION fuel supplier and is:

- (1) A distributor subject to the notification requirement of section XX-8.4;
- (2) A distributor or position holder that is required to submit a fuel shipment data report pursuant to paragraph XX-8.3(a)(1) or (2);
- (3) A distributor or position holder that elects to create a TREATS account for future use for complying with the requirements for a JURISDICTION fuel

- supplier, complying with the notification requirement, or submitting a fuel shipment data report pursuant to paragraph XX-8.3(a)(4); or
- (4) An operator of a reporting terminal.

*Reserve price.* The minimum acceptable price for each CO<sub>2</sub> allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in Subpart XX-11.

*Serial number.* When referring to CO<sub>2</sub> allowances, the unique number assigned to each CO<sub>2</sub> allowance by the REGULATORY AGENCY or its agent under subdivision XX-6.4(b).

*Specially designed for off-highway transportation.* With regard to a vehicle:

- (1) Specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or other operation similar to any one of such operations; and
- (2) Where, by reason of such special design, the use of such vehicle to transport such load over the public highways is substantially limited or substantially impaired.

*Specially designed mobile machinery for non-transportation functions.* With regard to a vehicle, consisting of a chassis:

- (1) To which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or other operation similar to any one of such operations if the operation of the machinery or equipment is unrelated to transportation on or off the public highways;
- (2) That has been specially designed to serve only as a mobile carriage and mount and, where applicable, a power source for the particular

machinery or equipment involved, whether or not such machinery or equipment is in operation; and

- (3) That, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

*Submit.* To send or transmit a document, information, or correspondence to the entity specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery including, but not limited to, electronic transmission and delivery.

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

*Successor owner or operator.* An entity that becomes an owner or operator of a JURISDICTION fuel supplier or reporting-only entity after the date the JURISDICTION fuel supplier or reporting-only entity initially registers in accordance with subdivision XX-1.5(a) or XX-1.6(a), as applicable.

*Terminal.* A storage and distribution facility located in the United States that is supplied by pipeline or waterborne vessel, and from which transportation fuel may be removed at a rack. A refinery may include such a facility.

*Transportation and Climate Initiative Program (TCI-P).* The multijurisdictional cap-and-invest program, consisting of this Part and the corresponding regulations of other individual participating jurisdictions implemented under their independent legal authority, to reduce CO<sub>2</sub> emissions from transportation,

**[Each participating jurisdiction may codify additional program definition language as appropriate. The language below is an example of one possible approach.]**

and to invest proceeds from the program in measures designed to further reduce CO<sub>2</sub> emissions, provide incentives for low-carbon and more resilient transportation, and otherwise further the goals of the TCI-P as further set forth in this Part.

*Transportation Registration, Emissions, and Allowance Tracking System (TREATS).* A system comprised of the Emissions Tracking Sub-system, by which the REGULATORY AGENCY or its agent tracks reported fuel shipment data and facilitates CO<sub>2</sub> emissions reporting, and the Allowance Tracking Sub-system, by which the REGULATORY AGENCY or its agent records allocations, deductions, and transfers of CO<sub>2</sub> allowances.

*Transportation Registration, Emissions, and Allowance Tracking System account.* An account in the TREATS established by the REGULATORY AGENCY or its agent for purposes of reporting CO<sub>2</sub> emissions and data to the Emissions Tracking Sub-system, or recording the allocation, holding, transferring, or deducting of CO<sub>2</sub> allowances in the Allowance Tracking Sub-system. The REGULATORY AGENCY or its agent may open a TREATS account that is closed.

*Transportation fuel or fuel.* Motor gasoline or on-road diesel fuel.

*Undistributed CO<sub>2</sub> allowances.* CO<sub>2</sub> allowances originally allocated to an account pursuant to section XX-5.3 that were not distributed.

*Unsold CO<sub>2</sub> allowances.* CO<sub>2</sub> allowances that have been made available for sale in an auction conducted by the REGULATORY AGENCY or its agent, but not sold.

*Verification.* A systematic, independent and documented process for evaluation of a JURISDICTION fuel supplier's CO<sub>2</sub> emissions data reports against the REGULATORY AGENCY's reporting procedures and methods for calculation and reporting CO<sub>2</sub> emissions.

*Verification body.* An entity accredited by the REGULATORY AGENCY to render a verification statement and provide verification services.

*Verification services.* Services provided for a JURISDICTION fuel supplier during verification as specified in section XX-9.2.

*Verification team.* Any natural person(s) working for a verification body, including all subcontractors, to provide verification services.

*Verifier.* A natural person accredited by the REGULATORY AGENCY to carry out verification services.

### **XX-1.3      Measurements, abbreviations, and acronyms.**

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

- (1)    ATS: Allowance tracking sub-system
- (2)    CO<sub>2</sub>: carbon dioxide
- (3)    CBOB: Conventional blendstock for oxygenate blending
- (4)    CCR: Cost containment reserve
- (5)    CFR: Code of Federal Regulations
- (6)    ECR: Emissions containment reserve
- (7)    ETS: Emissions tracking sub-system
- (8)    psi: pounds per square inch
- (9)    RBOB: Reformulated blendstock for oxygenate blending
- (10)   TCI-P: Transportation and Climate Initiative Program
- (11)   TREATS: Transportation Registration, Emissions, and Allowance Tracking System

### **XX-1.4      Applicability.**



- (a) Beginning January 1, 2022 JURISDICTION fuel suppliers shall be subject to the requirements of this Part. However, JURISDICTION fuel suppliers shall not be subject to the requirements of subdivisions XX-1.5(b) and (c) until January 1, 2023.
- (b) Beginning January 1, 2022 reporting-only entities shall be subject to the requirements of section XX-1.6 and the sections referenced therein and section XX-6.9.
- (c) Beginning January 1, 2022, verifiers and verification bodies shall be subject to Subpart XX-9 of this Part, and independent verifiers of offset projects shall be subject to Subpart XX-10 of this Part.
- (d) Beginning January 1, 2022 entities that open general accounts shall be subject to the requirements of sections XX-6.2 and XX-6.8 and Subpart XX-11.
- (e) Beginning January 1, 2022, project sponsors of offset projects shall be subject to Subpart XX-10 of this Part and the sections referenced therein and section XX-6.8.
- (f) *Demonstration of Non-Applicability.* If the REGULATORY AGENCY has determined that an entity may be subject to this Part, the REGULATORY AGENCY may require from an entity that is a position holder, a below-the-rack distributor, or operator of a reporting terminal a statement demonstrating that it is not subject to the requirements of this Part. Such demonstration must be provided to the REGULATORY AGENCY within 20 days of receipt of a request.
- (g) *Cessation of compliance and reporting requirements due to zero CO<sub>2</sub> emissions.* JURISDICTION fuel suppliers subject to this Part may qualify for cessation of compliance and reporting requirements if CO<sub>2</sub> emissions that such entities are required to report by this Part fall to zero metric tons and remain at zero metric tons for the remainder of that control period and for an entire subsequent control period. JURISDICTION fuel suppliers must meet all the requirements of this Part until approved for cessation pursuant to this subdivision, except as provided in paragraph (1) of this

subdivision. If its CO<sub>2</sub> emissions that are required to be reported under Subpart XX-8 absent approval of cessation exceed zero metric tons for any day after it qualifies for cessation, the JURISDICTION fuel supplier shall again become subject to all the requirements of this Part as specified in subdivision (a) of this section starting the first day of such non-zero CO<sub>2</sub> emissions.

- (1) JURISDICTION fuel suppliers must verify their CO<sub>2</sub> emissions data reports for the first calendar year in which they report zero CO<sub>2</sub> emissions for an entire calendar year pursuant to Subpart XX-9, but not for any calendar year thereafter in which they have zero reportable CO<sub>2</sub> emissions.
- (2) Any JURISDICTION fuel supplier that has met the cessation requirements set forth in this subdivision may submit an application to the REGULATORY AGENCY requesting approval to cease its compliance and reporting requirements under this Part and its requirements to have a CO<sub>2</sub> authorized account representative and an updated list of owners and operators under subdivisions XX-2.1(a) and XX-2.4(c).
  - (i) Such application must include the following information in a format prescribed by the REGULATORY AGENCY:
    - (a) The reason for the reduction of CO<sub>2</sub> emissions to zero and whether the reduction to zero is expected to be temporary or permanent.
    - (b) Certification that the JURISDICTION fuel supplier has met the cessation requirements and complied with all requirements of this Part during all control periods and interim control periods for which the JURISDICTION fuel supplier was required to comply with any provision of this Part. Such requirements include, but are not limited to, completion of all required CO<sub>2</sub> emissions and fuel shipment data reporting, verification of CO<sub>2</sub> emissions data reports, and the holding of CO<sub>2</sub> allowances to meet the requirements of subdivisions XX-1.5(b) and (c).

- (c) A request that the JURISDICTION fuel supplier's reporting account be closed.
  - (d) A request that the JURISDICTION fuel supplier's compliance account be closed once it is cleared of all CO<sub>2</sub> allowances.
  - (e) Other information required by the REGULATORY AGENCY.
- (ii) The REGULATORY AGENCY may require submission of additional information relevant to the determination and shall make a determination on such application in its discretion.
- (3) JURISDICTION fuel suppliers that are approved for cessation of compliance and reporting requirements under this Part must keep records as required under paragraph XX-1.5(d)(1).

**XX-1.5 Standard requirements for JURISDICTION fuel suppliers.**

- (a) *Registration requirement.*
  - (1) JURISDICTION fuel suppliers shall register in accordance with paragraph (2) of this subdivision within 15 days after becoming a JURISDICTION fuel supplier.
  - (2) Each JURISDICTION fuel supplier shall register an authorized account representative in accordance with section XX-2.1 and submit to the REGULATORY AGENCY or its agent a complete account certificate of representation in accordance with section XX-2.4.
- (b) *CO<sub>2</sub> requirements.*
  - (1) Each JURISDICTION fuel supplier shall hold CO<sub>2</sub> allowances available for compliance deductions under section XX-6.5, as of the CO<sub>2</sub> allowance transfer deadline, in the JURISDICTION fuel supplier's compliance account in an amount not less than the metric tonnage equivalent of the JURISDICTION fuel supplier's total CO<sub>2</sub> emissions for the control period, less the CO<sub>2</sub> allowances deducted to meet the requirements of paragraph

- (2) of this subdivision, with respect to the previous two interim control periods, as determined in accordance with Subparts XX-6, XX-8, and XX-9.
- (2) Each JURISDICTION fuel supplier shall hold CO<sub>2</sub> allowances available for compliance deductions under section XX-6.5, as of the CO<sub>2</sub> allowance transfer deadline, in the JURISDICTION fuel supplier's compliance account in an amount not less than the total CO<sub>2</sub> emissions for the interim control period multiplied by 0.50, as determined in accordance with Subparts XX-6, XX-8, and XX-9.
- (3) Each metric ton of CO<sub>2</sub> excess emissions shall constitute a separate violation of this Part and applicable JURISDICTION law.
- (4) Each metric ton of CO<sub>2</sub> excess interim emissions shall constitute a separate violation of this Part and applicable JURISDICTION law.
- (5) CO<sub>2</sub> allowances shall be held in, deducted from, or transferred among TREATS accounts in accordance with Subparts XX-5, XX-6, and XX-7, and section XX-10.7.
- (6) A CO<sub>2</sub> allowance shall not be deducted, in order to comply with the requirements under paragraph (1) or (2) of this subdivision, for a control period or interim control period that ends prior to the calendar year for which the CO<sub>2</sub> allowance was allocated. A CO<sub>2</sub> offset allowance shall not be deducted, in compliance with the requirements of paragraph (1) or (2) of this subdivision, beyond the applicable percent limitations in paragraph XX-6.5(a)(3).
- (7) A CO<sub>2</sub> allowance issued pursuant to this Part does not constitute a property right. No provision of the TCI-P or any provision of law shall be construed to limit the authority of the REGULATORY AGENCY or a participating jurisdiction to terminate or limit such authorization.
- (c) *CO<sub>2</sub> excess emissions requirements.* If a JURISDICTION fuel supplier has CO<sub>2</sub> excess emissions in any control period, or CO<sub>2</sub> excess interim emissions for any interim control period, the JURISDICTION fuel supplier and the owners and operators of the

JURISDICTION fuel supplier shall:

- (1) Forfeit the CO<sub>2</sub> allowances required for deduction under paragraph XX-6.5(d)(1), provided that CO<sub>2</sub> offset allowances may not be used to cover any part of such CO<sub>2</sub> excess emissions; and
- (2) Pay any fine, penalty, or assessment or comply with any other remedy imposed under paragraph XX-6.5(d)(2).

(d) *Recordkeeping and reporting requirements.*

- (1) *Recordkeeping.* Unless otherwise provided, each JURISDICTION fuel supplier shall keep in its possession, custody, and control each of the following documents for a period of 10 years from the date the document is created or submitted, whichever is later. Any recordkeeping period may be extended, at any time prior to the end of the period, by the REGULATORY AGENCY.
  - (i) Copies of all account certificates of representation for the CO<sub>2</sub> authorized account representative for the JURISDICTION fuel supplier and all documents that demonstrate the truth of the statements in the certificates of representation, in accordance with section XX-2.4, provided that the certificates and documents shall be retained beyond such 10-year period until such documents are superseded because of the submission of a new certificate of representation changing the CO<sub>2</sub> authorized account representative.
  - (ii) Copies of all reports, compliance certifications, and other submissions and all records made or required under this Part.
  - (iii) Copies of all documents used to complete any submission under this Part or to demonstrate compliance with the requirements of this Part, provided that all material received, reviewed, or generated to provide a CO<sub>2</sub> emissions data, fuel shipment data, or compliance certification report, notification, application for qualification, or other information under this Part, shall be retained for 10 years from

submission of the report, notification, application, or information.

- (2) *Certification.* The CO<sub>2</sub> authorized account representative of a JURISDICTION fuel supplier shall submit the compliance certifications in accordance with the requirements of Subpart XX-4.
- (3) *Reporting.* The CO<sub>2</sub> authorized account representative of a JURISDICTION fuel supplier shall submit the reports and any other information using the TREATS in accordance with the requirements of Subparts XX-8 and XX-9.

(e) *Liability.*

- (1) Any provision of this Part that applies to a JURISDICTION fuel supplier (including a provision applicable to the CO<sub>2</sub> authorized account representative of a JURISDICTION fuel supplier) shall also apply to the owners and operators of the JURISDICTION fuel supplier.
- (2) Any provision of this Part that applies to a JURISDICTION fuel supplier (including a provision applicable to the CO<sub>2</sub> authorized account representative of a JURISDICTION fuel supplier) shall also apply to any successor owner or operator of the JURISDICTION fuel supplier. This includes the provision in paragraph (b)(1) of this section requiring holding of CO<sub>2</sub> allowances in an amount not less than the supplier's total CO<sub>2</sub> emissions for the whole control period, less the CO<sub>2</sub> allowances deducted to meet the requirements of paragraph (b)(2) of this section, with respect to the previous two interim control periods, as determined in accordance with Subparts XX-6, XX-8, and XX-9, even if the CO<sub>2</sub> emissions occurred prior to the change in ownership. This also includes the provision in paragraph (b)(2) of this section requiring the holding of CO<sub>2</sub> allowances in an amount not less than the supplier's total CO<sub>2</sub> emissions for the whole interim control period multiplied by 0.50, as determined in accordance with Subparts XX-6, XX-8, and XX-9, even if the CO<sub>2</sub> emissions occurred prior to the change in ownership.

(f) *Effect on other authorities.* No provision of this Part shall be construed as exempting or excluding the JURISDICTION fuel suppliers, and the owners and operators thereof and, to the extent applicable, the CO<sub>2</sub> authorized account representative of the JURISDICTION fuel supplier from compliance with any other provisions of applicable JURISDICTION law.

#### **XX-1.6 Standard requirements for reporting-only entities.**

(a) *Registration requirement.*

- (1) Reporting-only entities shall register in accordance with paragraph (2) of this subdivision.
- (2) Each reporting-only entity or entity that elects to become a reporting-only entity shall register by identifying itself and a CO<sub>2</sub> authorized account representative in accordance with section XX-2.1 and submit to the REGULATORY AGENCY a complete account certificate of representation in accordance with section XX-2.4.

(b) *Recordkeeping and reporting requirements.*

- (1) Unless otherwise provided, each reporting-only entity shall keep in its possession, custody, or control each of the following documents for a period of 10 years from the date the document is created or submitted, whichever is later. Any recordkeeping period may be extended, at any time prior to the end of the period, by the REGULATORY AGENCY.
  - (i) Copies of all of the account certificates of representation for the CO<sub>2</sub> authorized account representative filed by a reporting-only entity and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with section XX-2.4, provided that the certificate and documents shall be retained beyond such 10-year period until such documents are superseded because of the submission of a new certificate of representation changing the CO<sub>2</sub> authorized account

representative.

- (ii) Copies of all reports and other submissions and all records made or required under this Part.
- (iii) Copies of all documents used to complete any submission under this Part or to demonstrate compliance with the requirements of this Part, provided that all material received, reviewed, or generated to provide a fuel shipment data report, notification, or other information under this Part shall be retained for 10 years from submission of the report, notification, or other information.

- (2) *Reporting.* The CO<sub>2</sub> authorized account representative of a reporting-only entity shall submit the reports and any other information using the TREATS in accordance with the requirements of Subpart XX-8.

(c) *Liability.*

- (1) Any provision of this Part that applies to a reporting-only entity (including a provision applicable to the CO<sub>2</sub> authorized account representative of a reporting-only entity) shall also apply to the owners and operators of the reporting-only entity.
- (2) Any provision of this Part that applies to a reporting-only entity (including a provision applicable to the CO<sub>2</sub> authorized account representative of a reporting-only entity) shall also apply to any successor owner or operator of the reporting-only entity, even if the reportable disbursements or deliveries occurred prior to the change in ownership.

(d) *Effect on other authorities.* No provision of this Part shall be construed as exempting or excluding the reporting-only entities, and the owners and operators thereof and, to the extent applicable, the CO<sub>2</sub> authorized account representative of the reporting-only entity from compliance with any other provisions of applicable JURISDICTION law.



#### **XX-1.7 Computation of time.**

- (a) Unless otherwise stated, any time period scheduled, under this Part, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.
- (b) Unless otherwise stated, any time period scheduled, under this Part, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.
- (c) Unless otherwise stated, if a deadline or the final day of any time period, under this Part, falls on a day that is not a business day, the time period shall be extended to the next business day.

#### **XX-1.8 Severability.**

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

#### **XX-1.9 Implementation Plan.**

By **[date]**, JURISDICTION will develop and publish an implementation plan explaining how equity commitments in Subpart XX-3 and other aspects of program implementation will be embodied in legislation, regulations, or other directives.

### **Subpart XX-2 CO<sub>2</sub> Authorized Account Representative**

#### **XX-2.1 Authorization and responsibilities of the CO<sub>2</sub> authorized account representative.**

- (a) Except as provided under section XX-2.2, each JURISDICTION fuel supplier or

reporting-only entity shall have one and only one CO<sub>2</sub> authorized account representative, with regard to all matters under this Part.

(b) The CO<sub>2</sub> authorized account representative shall be selected by an agreement binding on the JURISDICTION fuel supplier or reporting-only entity, and on each owner and operator thereof, and must act in accordance with the account certificate of representation under section XX-2.4.

(c) Upon receipt by the REGULATORY AGENCY or its agent of a complete account certificate of representation under section XX-2.4, the CO<sub>2</sub> authorized account representative shall represent and, by his or her representations, actions, inactions, or submissions, legally bind the JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, in all matters pertaining to this Part and in relation to all types of accounts created for the JURISDICTION fuel supplier or reporting-only entity pursuant to section XX-6.2, notwithstanding any agreement between the CO<sub>2</sub> authorized account representative and such JURISDICTION fuel supplier or reporting-only entity, and the owners or operators thereof. The JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, shall be bound by any decision or order issued to the CO<sub>2</sub> authorized account representative by the REGULATORY AGENCY or a court.

(d) No TREATS account shall be established for a JURISDICTION fuel supplier or reporting-only entity until the REGULATORY AGENCY or its agent has received a complete account certificate of representation under section XX-2.4 for a CO<sub>2</sub> authorized account representative.

(e) Each submission under this Part shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative for each JURISDICTION fuel supplier or reporting-only entity on behalf of which the submission is made. Each such submission made in accordance with this Part shall include the following certification statement by the CO<sub>2</sub> authorized account representative, in a format prescribed by the

REGULATORY AGENCY:

*“I am authorized to make this submission on behalf of the JURISDICTION fuel supplier or reporting-only entity, and on behalf of the owners and operators thereof, 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 civil or criminal penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”*

(f) The REGULATORY AGENCY or its agent will accept or act on a submission made on behalf a JURISDICTION fuel supplier or reporting only entity, or on behalf of the owners and operators thereof, only if the submission has been made, signed, and certified in accordance with subdivision (e) of this section.

**XX-2.2 CO<sub>2</sub> authorized alternate account representative.**

(a) An account certificate of representation may designate one and only one CO<sub>2</sub> authorized alternate account representative who may act on behalf of the CO<sub>2</sub> authorized account representative and that legally binds the JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, in all matters pertaining to this Part and in relation to all types of accounts created for the JURISDICTION fuel supplier or reporting-only entity pursuant to section XX-6.2. The agreement by which the CO<sub>2</sub> authorized alternate account representative is selected shall include a procedure for authorizing the CO<sub>2</sub> authorized alternate account representative to act in lieu of the CO<sub>2</sub> authorized account representative.

(b) Upon receipt by the REGULATORY AGENCY or its agent of a complete account certificate of representation under section XX-2.4, any representation, action, inaction,

or submission by the CO<sub>2</sub> authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO<sub>2</sub> authorized account representative.

(c) Except in this section and subdivision XX-2.1(a) and sections XX-2.3, XX-2.4, XX-2.6, and XX-6.2, whenever the term “CO<sub>2</sub> authorized account representative” is used in this Part, the term shall be construed to include the CO<sub>2</sub> authorized alternate account representative.

**XX-2.3 Changing the CO<sub>2</sub> authorized account representatives and the CO<sub>2</sub> authorized alternate account representative; changes in the owners and operators.**

(a) *Changing the CO<sub>2</sub> authorized account representative.* The CO<sub>2</sub> authorized account representative may be changed at any time upon receipt by the REGULATORY AGENCY or its agent of a superseding complete account certificate of representation under section XX-2.4. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative, or the previous CO<sub>2</sub> authorized alternate account representative, prior to the time and date when the REGULATORY AGENCY or its agent receives the superseding account certificate of representation shall be binding on the new CO<sub>2</sub> authorized account representative, the JURISDICTION fuel supplier or reporting-only entity, and the owners and operators thereof.

(b) *Changing the CO<sub>2</sub> authorized alternate account representative.* The CO<sub>2</sub> authorized alternate account representative may be changed at any time upon receipt by the REGULATORY AGENCY or its agent of a superseding complete account certificate of representation under section XX-2.4. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative, or the previous CO<sub>2</sub> authorized alternate account

representative, prior to the time and date when the REGULATORY AGENCY or its agent receives the superseding account certificate of representation shall be binding on the new CO<sub>2</sub> authorized alternate account representative, the JURISDICTION fuel supplier or reporting-only entity, and the owners and operators thereof.

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

- (1) In the event a new owner or operator of a JURISDICTION fuel supplier or reporting-only entity 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 CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative of the JURISDICTION fuel supplier or reporting-only entity, and the decisions, orders, actions, and inactions of the REGULATORY AGENCY, as if the new owner or operator were included in such list.
- (2) Within 30 days following any change in the owners and operators of a JURISDICTION fuel supplier or reporting-only entity, including the addition of a new owner or operator, the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> 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 as to the name of the owners and operators that are liable for compliance with applicable provisions of this Part, including but not limited to:
  - (i) Holding CO<sub>2</sub> allowances available for compliance deductions under section XX-6.5, as of the CO<sub>2</sub> allowance transfer deadline, in the JURISDICTION fuel supplier's compliance account in an amount not less than the metric tonnage equivalent of the JURISDICTION fuel supplier's total CO<sub>2</sub> emissions for the control period, less the CO<sub>2</sub> allowances deducted to meet the requirements of paragraph XX-

1.5(b)(2), with respect to the previous two interim control periods, as determined in accordance with Subparts XX-6, XX-8, and XX-9; or

- (ii) Reporting CO<sub>2</sub> emissions or other data as required in accordance with Subparts XX-8 and XX-9.

#### **XX-2.4 Account certificate of representation.**

(a) A complete account certificate of representation for a CO<sub>2</sub> authorized account representative or an CO<sub>2</sub> authorized alternate account representative shall include the following elements in a format prescribed by the REGULATORY AGENCY:

- (1) Identification of the JURISDICTION fuel supplier, reporting-only entity, or entity that elects to become a reporting-only entity for which the account certificate of representation is submitted and, for a terminal operator, identification of the terminal with regard to which it is a reporting-only entity or elects to become a reporting-only entity;
- (2) The name, address, e-mail address, and telephone number, of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative;
- (3) A list of the owners and operators of the JURISDICTION fuel supplier, reporting-only entity, or entity that elects to become a reporting-only entity;
- (4) The following certification statement by the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative:  
*"I certify that I was selected as the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as applicable, by an agreement binding on the JURISDICTION fuel supplier or reporting-only entity, and of the owners and operators thereof. I certify that I have all the necessary authority to carry out my duties and responsibilities under Part*

*XX on behalf of the JURISDICTION fuel supplier or reporting-only entity, and the owners and operators thereof, and that the JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the REGULATORY AGENCY or a court regarding the JURISDICTION fuel supplier or reporting-only entity.”; and*

- (5) If the account certificate of representation is submitted for the operator of a terminal not located in JURISDICTION, the following statement signed and dated by the terminal operator: *“The undersigned operator of a terminal not located in JURISDICTION agrees to comply with the requirements of Part XX applicable to operators of terminals located in JURISDICTION and submits to the jurisdiction of JURISDICTION, and waives any defense that JURISDICTION lacks jurisdiction, with regard to the application and enforcement of such requirements.”; and*
- (6) The signature of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative and the dates signed.

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

#### **XX-2.5 Objections concerning the CO<sub>2</sub> authorized account representative.**

(a) Once a complete account certificate of representation under section XX-2.4 has been submitted and received, the REGULATORY AGENCY and its agent will rely on the account certificate of representation unless and until the REGULATORY AGENCY or its agent receives a superseding complete account certificate of representation under section XX-2.4.

(b) Except as provided in subdivision XX-2.3(a) or (b), no other communication submitted to the REGULATORY AGENCY or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative shall affect any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or the finality of any decision or order by the REGULATORY AGENCY or its agent under this Part.

(c) Neither the REGULATORY AGENCY nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CO<sub>2</sub> authorized account representative, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.

#### **XX-2.6 Delegation by CO<sub>2</sub> authorized account representative.**

(a) A CO<sub>2</sub> authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the REGULATORY AGENCY or its agent under this Part.

(b) A CO<sub>2</sub> authorized alternate account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the REGULATORY AGENCY or its agent under this Part.

(c) In order to delegate authority to make an electronic submission to the REGULATORY AGENCY or its agent in accordance with subdivision (a) and (b) of this section, the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, must submit to the REGULATORY AGENCY or its agent a notice of delegation, in a format prescribed by the REGULATORY AGENCY that includes the following elements:

- (1) The name, address, e-mail address, and telephone number of such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account



representative;

- (2) The name, address, e-mail address, and telephone number of each such natural person, herein referred to as the “electronic submission agent”;
- (3) For each such natural person, a list of the type of electronic submissions under subdivision (a) or (b) of this section for which authority is delegated to him or her; and
- (4) The following certification statements by such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative:
  - (i) *“I agree that any electronic submission to the REGULATORY AGENCY or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subdivision XX-2.6(d) shall be deemed to be an electronic submission by me. I certify that the JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, shall be fully bound by any such electronic submission.”*
  - (ii) *“Until this notice of delegation is superseded by another notice of delegation under subdivision XX-2.6(d), I agree to maintain an e-mail account and to notify the REGULATORY AGENCY or its agent immediately of any change in my e-mail address unless all delegation authority by me under section XX-2.6 is terminated.”*

(d) A notice of delegation submitted under subdivision (c) of this section shall be effective, with regard to the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative identified in such notice, upon receipt of such notice by the REGULATORY AGENCY or its agent and until receipt by the REGULATORY AGENCY or its agent of a superseding notice of delegation by such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> 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 subparagraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under subdivision (d) of this section shall be deemed to be an electronic submission by the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative submitting such notice of delegation.

(f) A CO<sub>2</sub> authorized account representative may delegate, to one or more natural persons, his or her authority to review information in the TREATS under this Part.

(g) A CO<sub>2</sub> authorized alternate account representative may delegate, to one or more natural persons, his or her authority to review information in the TREATS under this Part.

(h) In order to delegate authority to review information in the TREATS in accordance with subdivision (f) and (g) of this section, the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, must submit to the REGULATORY AGENCY or its agent a notice of delegation, in a format prescribed by the REGULATORY AGENCY that includes the following elements:

- (1) The name, address, e-mail address, and telephone number of such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative;
- (2) The name, address, e-mail address, and telephone number of each such natural person, herein referred to as the “reviewer”;
- (3) For each such natural person, a list of the type of information under subdivision (f) or (g) of this section for which authority is delegated to him or her; and
- (4) The following certification statements by such CO<sub>2</sub> authorized account

representative or CO<sub>2</sub> authorized alternate account representative:

- (i) *“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 reviewed when I am a CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subdivision XX-2.6(i) shall be deemed to be reviewed by me. I certify that the JURISDICTION fuel supplier or reporting-only entity, and each owner and operator thereof, shall be fully bound by such review.”*
- (ii) *“Until this notice of delegation is superseded by another notice of delegation under subdivision XX-2.6(i), I agree to maintain an e-mail account and to notify the REGULATORY AGENCY or its agent immediately of any change in my e-mail address unless all delegation authority by me under section XX-2.6 is terminated.”*

(i) A notice of delegation submitted under subdivision (h) of this section shall be effective, with regard to the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative identified in such notice, upon receipt of such notice by the REGULATORY AGENCY or its agent and until receipt by the REGULATORY AGENCY or its agent of a superseding notice of delegation by such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> 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.

### **Subpart XX-3      Equity**

#### **XX-3.1      Equity investment commitment.**

JURISDICTION and/or the REGULATORY AGENCY is/are committed to working collaboratively within its jurisdiction to invest, in a manner that reflects the population of overburdened and underserved communities, no less than 35 percent of the proceeds from the auction of allowances to ensure that overburdened and underserved communities benefit equitably from clean transportation projects and programs.

Nothing in this rule shall be interpreted as preventing a jurisdiction or agency from investing a percentage greater than the minimum percent of the proceeds for the benefit of overburdened and underserved communities.

JURISDICTION and/or the REGULATORY AGENCY will work collaboratively with the Equity Advisory Body and other stakeholders within its jurisdiction to identify the investment opportunities that best meet the needs of underserved and overburdened communities.

### **XX-3.2 Equity advisory body**

- (a) By **[date]**, JURISDICTION shall establish and support an Equity Advisory Body (or bodies) composed of diverse stakeholder groups, with a majority of members being representatives of overburdened and underserved communities or populations, or designate an existing body that meets this description, to advise on decision-making and equitable outcomes for the TCI-P, including:
  - (1) Developing criteria for defining overburdened and underserved communities, building on existing criteria and definitions, where applicable;
  - (2) Providing recommendations for equitable investments of program proceeds and complementary policies that would achieve the requisite benefits for overburdened and underserved communities; and
  - (3) Developing metrics for evaluating how investments of program proceeds demonstrably provide direct and meaningful benefits for overburdened and underserved communities.

- (4) Make recommendations on program improvements to ensure jurisdictions are making significant progress with respect to equity metrics and that overburdened and underserved communities receive direct and meaningful benefits; and
- (5) Make recommendations regarding the development and implementation of air quality monitoring to inform the TCI-P.

### **XX-3.3 Equity review and reporting.**

JURISDICTION and/or the REGULATORY AGENCY will annually review and report the impacts of the TCI-P, including with respect to equity. JURISDICTION and/or the REGULATORY AGENCY will work with communities, its Equity Advisory Body and relevant technical experts to assess the equity impacts of the program on an ongoing basis, including by monitoring air quality in communities overburdened by air pollution to ensure the effectiveness of policies and investments. Results of air quality monitoring from participating jurisdictions will be considered during TCI-P program reviews. Annual reports will specify how TCI-P proceeds are spent and include lists of projects and programs supported by TCI-P proceeds and the levels of investment received by each.

## **Subpart XX-4 Compliance Certification**

### **XX-4.1 Compliance certification report.**

(a) *Applicability and deadline.* For each control period in which a JURISDICTION fuel supplier is subject to the CO<sub>2</sub> requirements of subdivision XX-1.5(b), the CO<sub>2</sub> authorized account representative of the JURISDICTION fuel supplier shall submit to the REGULATORY AGENCY by July 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 CO<sub>2</sub> authorized account representative shall include in the compliance certification report under subdivision (a) of this section the following elements, in a format prescribed by the REGULATORY AGENCY:

- (1) Identification of the JURISDICTION fuel supplier;
- (2) At the CO<sub>2</sub> authorized account representative's option, the serial numbers of the CO<sub>2</sub> allowances that are to be deducted from the JURISDICTION fuel supplier's compliance account under section XX-6.5 for the control period, including the serial numbers of any CO<sub>2</sub> offset allowances that are to be deducted subject to the limitations of paragraph XX-6.5(a)(3);
- (3) The compliance certification under subdivision (c) of this section; and
- (4) Other information as required by the REGULATORY AGENCY.

(c) *Compliance certification.* In the compliance certification report under subdivision (a) of this section, the CO<sub>2</sub> authorized account representative shall certify, based on reasonable inquiry of those entities with primary responsibility for operating the JURISDICTION fuel supplier in compliance with this Part, whether the JURISDICTION fuel supplier for which the compliance certification is submitted met the definition of JURISDICTION fuel supplier during the calendar years covered by the report and was in compliance with the requirements of this Part, including, but not limited to:

- (1) Whether the JURISDICTION fuel supplier met the requirements of subdivision XX-1.5(b); and
- (2) Whether the JURISDICTION fuel supplier met the requirements of Subparts XX-8 and XX-9.

#### **XX-4.2 REGULATORY AGENCY's action on compliance certifications.**

(a) The REGULATORY AGENCY or its agent may review and conduct independent audits concerning any compliance certification or any other submission under this Part, and the REGULATORY AGENCY may make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The REGULATORY AGENCY or its agent may deduct CO<sub>2</sub> allowances from or transfer CO<sub>2</sub> allowances to a JURISDICTION fuel supplier's compliance account based on the information in the compliance certifications or other submissions, as adjusted under subdivision (a) of this section.

## **Subpart XX-5      CO<sub>2</sub> Allowance Allocations**

### **XX-5.1      JURISDICTION Transportation and Climate Initiative Program base budget.**

- (a) For 2023, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (b) For 2024, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (c) For 2025, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (d) For 2026, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (e) For 2027, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (f) For 2028, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (g) For 2029, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (h) For 2030, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (i) For 2031, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.
- (j) For 2032 and each succeeding calendar year, the JURISDICTION TCI-P budget is \_\_\_\_\_metric tons.

**[TCI-P participating jurisdictions may add language related to future program budget adjustments.]**

## **XX-5.2 Retirement of CO<sub>2</sub> allowances.**

(a) The REGULATORY AGENCY may retire undistributed CO<sub>2</sub> allowances at the end of each control period.

(b) The REGULATORY AGENCY may retire unsold CO<sub>2</sub> allowances at the end of each control period.

## **XX-5.3 CO<sub>2</sub> allowance allocations.**

**[TCI-P participating jurisdictions will offer all CO<sub>2</sub> allowances for sale at auction, except that TCI-P participating jurisdictions may set aside or retire CO<sub>2</sub> allowances to be used to achieve other TCI-P goals. Allocation provisions will vary from jurisdiction to jurisdiction.]**

(a) *CO<sub>2</sub> allowances available for allocation.* For the allocation year 2023 and each succeeding allocation year, the JURISDICTION TCI-P budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO<sub>2</sub> offset allowances and CO<sub>2</sub> CCR allowances.

(b) *Cost Containment Reserve (CCR) allocation.* The REGULATORY AGENCY shall allocate CO<sub>2</sub> CCR allowances from the JURISDICTION CCR ACCOUNT, separate from and additional to the JURISDICTION TCI-P budget set forth in section XX-5.1, to the JURISDICTION AUCTION ACCOUNT. The CCR allocation is for the purpose of containing the cost of CO<sub>2</sub> allowances. The REGULATORY AGENCY shall allocate CO<sub>2</sub>



CCR allowances in the following manner:

- (1) On or before January 1, 2023 and each calendar year thereafter, the REGULATORY AGENCY shall allocate that allocation year's CO<sub>2</sub> CCR allowances, and withdraw the number of CO<sub>2</sub> CCR allowances that remain in the JURISDICTION AUCTION ACCOUNT at the end of the prior calendar year.
- (2) The number of current allocation year CO<sub>2</sub> CCR allowances allocated each calendar year shall be equal to 10% of the JURISDICTION TCI-P budget for the calendar year specified in section XX-5.1.
- (3) If the condition for selling CO<sub>2</sub> CCR allowances specified in paragraph XX-11.3(f)(1) is met at an auction, then CO<sub>2</sub> CCR allowances may be sold at that auction in accordance with subdivision XX-11.3(f).

(c) *Emissions Containment Reserve (ECR) Withholding.* The REGULATORY AGENCY shall convert and transfer any CO<sub>2</sub> allowances that have been withheld from any auction(s) into the JURISDICTION ECR ACCOUNT. The ECR withholding is for the purpose of additional CO<sub>2</sub> emissions reductions in the event of lower than anticipated CO<sub>2</sub> emissions reduction costs. The REGULATORY AGENCY shall withhold CO<sub>2</sub> ECR allowances in the following manner.

- (1) If the condition for withholding of CO<sub>2</sub> ECR allowances specified in paragraph XX-11.3(g)(1) is met at an auction, then CO<sub>2</sub> ECR allowances will be withheld from that auction in accordance with subdivision XX-11.3(g). Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the JURISDICTION ECR ACCOUNT.
- (2) Allowances that have been transferred into the JURISDICTION ECR ACCOUNT shall not be withdrawn.
- (3) The maximum number of CO<sub>2</sub> ECR allowances that will be withheld from an auction shall be equal to 10% of the JURISDICTION TCI-P budget for the calendar year specified in section XX-5.1 minus the total quantity of CO<sub>2</sub> ECR allowances that have been withheld from any prior auction(s) in that calendar year.

## **Subpart XX-6**

# **Transportation Registration, Emissions, and Allowance Tracking System**

### **XX-6.1      Transportation Registration, Emissions, and Allowance Tracking System (TREATS) accounts.**

(a) *Nature and function of compliance accounts.* Consistent with subdivision XX-6.2(a), the REGULATORY AGENCY or its agent will establish one compliance account in the TREATS for each JURISDICTION fuel supplier. Allocations of CO<sub>2</sub> allowances pursuant to Subpart XX-5 and deductions or transfers of CO<sub>2</sub> allowances pursuant to section XX-4.2, XX-6.5, XX-6.7 or Subpart XX-7 will be recorded in the compliance account in accordance with this Subpart.

(b) *Nature and function of general accounts.* Consistent with subdivision XX-6.2(b), the REGULATORY AGENCY or its agent will establish, upon request, a general account in the TREATS for any entity. Transfers of CO<sub>2</sub> allowances pursuant to Subpart XX-7 and award or retirement of CO<sub>2</sub> allowances pursuant to Subpart XX-10 will be recorded in the general account in accordance with this Subpart.

(c) *Nature and function of reporting accounts.* Consistent with subdivision XX-6.2(c), the REGULATORY AGENCY or its agent will establish a reporting account in the TREATS for each JURISDICTION fuel supplier or reporting-only entity to facilitate the receipt and tracking of reporting submitted in accordance with the requirements of Subparts XX-8 and XX-9. Reporting accounts shall not hold CO<sub>2</sub> allowances. Reporting accounts may be linked to no more than one compliance account.

### **XX-6.2      Establishment of accounts.**

(a) *Compliance accounts.* Upon receipt of a complete account certificate of representation under section XX-2.4, the REGULATORY AGENCY or its agent will

establish a compliance account for each JURISDICTION fuel supplier for which the account certificate of representation was submitted.

(b) *General accounts.*

- (1) *Application for general account.* Any entity may apply to open a general account for the purpose of holding and transferring CO<sub>2</sub> allowances. An application for a general account may designate one and only one CO<sub>2</sub> authorized account representative and one and only one CO<sub>2</sub> authorized alternate account representative who may act on behalf of the CO<sub>2</sub> authorized account representative. The agreement by which the CO<sub>2</sub> authorized alternate account representative is selected shall include a procedure for authorizing the CO<sub>2</sub> authorized alternate account representative to act in lieu of the CO<sub>2</sub> authorized account representative.

A complete application for a general account shall be submitted to the REGULATORY AGENCY or its agent and shall include the following elements in a format prescribed by the REGULATORY AGENCY:

- (i) Name, address, e-mail address, and telephone number of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative;
- (ii) At the option of the CO<sub>2</sub> authorized account representative, organization name and type of organization;
- (iii) A list of all entities subject to a binding agreement for the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative to represent their ownership interest with respect to the CO<sub>2</sub> allowances held in the general account;
- (iv) The following certification statement by the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative: *"I certify that I was selected as the CO<sub>2</sub> authorized account representative or the CO<sub>2</sub> authorized alternate account representative, as applicable, by an agreement that is binding on all*

*entities who have an ownership interest with respect to CO<sub>2</sub> allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under Part XX on behalf of such entities and that each such entity shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the REGULATORY AGENCY or its agent or a court regarding the general account.”;*

- (v) The signature of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative and the dates signed; and
  - (vi) Unless otherwise required by the REGULATORY AGENCY or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the REGULATORY AGENCY or its agent. Neither the REGULATORY AGENCY nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.
- (2) *Authorization of CO<sub>2</sub> authorized account representative.*
- (i) Upon receipt by the REGULATORY AGENCY or its agent of a complete application for a general account under paragraph (b)(1) of this section:
    - (a) The REGULATORY AGENCY or its agent will establish a general account for the entity or entities for whom the application is submitted.
    - (b) The CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each entity who has an ownership interest with respect to CO<sub>2</sub> allowances held in the general account in all matters pertaining to this Part, notwithstanding any agreement

between the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative and such entity. Any such entity shall be bound by any order or decision issued to the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative by the REGULATORY AGENCY or its agent or a court regarding the general account.

- (c) Any representation, action, inaction, or submission by any CO<sub>2</sub> authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO<sub>2</sub> authorized account representative.

- (ii) Each submission concerning the general account shall be submitted, signed, and certified by the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative for the entities having an ownership interest with respect to CO<sub>2</sub> allowances held in the general account. Each such submission shall include the following certification statement by the CO<sub>2</sub> authorized account representative, or any CO<sub>2</sub> authorized alternate account representative, in a format prescribed by the REGULATORY AGENCY:

*"I am authorized to make this submission on behalf of the entities having an ownership interest with respect to the CO<sub>2</sub> 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 civil or criminal penalties for submitting false statements and information or omitting required statements and information, including the*

*possibility of fine or imprisonment.”*

- (iii) The REGULATORY AGENCY or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subparagraph (ii) of this paragraph.

(3) *Changing CO<sub>2</sub> authorized account representative and CO<sub>2</sub> authorized alternate account representative; changes in entities with ownership interest.*

- (i) The CO<sub>2</sub> authorized account representative for a general account may be changed at any time upon receipt by the REGULATORY AGENCY or its agent of a superseding complete application for a general account under paragraph (1) of this subdivision. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative, or the previous CO<sub>2</sub> authorized alternate account representative, prior to the time and date when the REGULATORY AGENCY or its agent receives the superseding application for a general account shall be binding on the new CO<sub>2</sub> authorized account representative and the entities with an ownership interest with respect to the CO<sub>2</sub> allowances in the general account.
- (ii) The CO<sub>2</sub> authorized alternate account representative for a general account may be changed at any time upon receipt by the REGULATORY AGENCY or its agent of a superseding complete application for a general account under paragraph (1) of this subdivision. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO<sub>2</sub> authorized account representative, or the previous CO<sub>2</sub> authorized alternate account representative, prior to the time and date when the REGULATORY AGENCY or its agent receives the superseding application for a general account shall be binding on the new CO<sub>2</sub> authorized alternate account representative and the entities with an

ownership interest with respect to the CO<sub>2</sub> allowances in the general account.

- (iii) In the event a new entity having an ownership interest with respect to CO<sub>2</sub> allowances in the general account is not included in the list of such entities in the application for a general account, such new entity shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO<sub>2</sub> authorized account representative and any CO<sub>2</sub> authorized alternate account representative, and the decisions, orders, actions, and inactions of the REGULATORY AGENCY or its agent, as if the new entity were included in such list.
- (iv) Within 30 days following any change in the entities having an ownership interest with respect to CO<sub>2</sub> allowances in the general account, including the addition or deletion of entities, the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative shall submit a revision to the application for a general account amending the list of entities having an ownership interest with respect to the CO<sub>2</sub> allowances in the general account to include the change.

(4) *Objections concerning CO<sub>2</sub> authorized account representative.*

- (i) Once a complete application for a general account under paragraph (1) of this subdivision has been submitted and received, the REGULATORY AGENCY or its agent will rely on the application unless and until a superseding complete application for a general account under paragraph (1) of this subdivision is received by the REGULATORY AGENCY or its agent.
- (ii) Except as provided in subparagraphs (3)(i) and (ii) of this subdivision, no objection or other communication submitted to the REGULATORY AGENCY or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO<sub>2</sub>

authorized account representative or any CO<sub>2</sub> authorized alternate account representative for a general account shall affect any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative or the finality of any decision or order by the REGULATORY AGENCY or its agent under this Part.

- (iii) Neither the REGULATORY AGENCY nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative for a general account, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.

(5) *Delegation by CO<sub>2</sub> authorized account representative and CO<sub>2</sub> authorized alternate account representative.*

- (i) A CO<sub>2</sub> authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the REGULATORY AGENCY or its agent provided for under this Subpart or Subpart XX-7, XX-10, or XX-11.
- (ii) A CO<sub>2</sub> authorized alternate account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the REGULATORY AGENCY or its agent provided for under this Subpart or Subpart XX-7, XX-10, or XX-11.
- (iii) In order to delegate authority to make an electronic submission to the REGULATORY AGENCY or its agent in accordance with subparagraphs (i) and (ii) of this paragraph, the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, must submit to the REGULATORY AGENCY or its agent a notice of delegation, in a format prescribed by the REGULATORY AGENCY that includes the following elements:
  - (a) The name, address, e-mail address, and telephone number



of such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative;

- (b) The name, address, e-mail address, and telephone number of each such natural person, herein referred to as “electronic submission agent”;
- (c) For each such natural person, a list of the type of electronic submissions under subdivision (b) of this section for which authority is delegated to him or her; and
- (d) The following certification statements by such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative:

- (1) *“I agree that any electronic submission to the REGULATORY AGENCY or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subparagraph XX-6.2(b)(5)(iv) shall be deemed to be an electronic submission by me. I certify that all entities who have an ownership interest with respect to CO<sub>2</sub> allowances held in the general account shall be fully bound by any such electronic submission.”*
- (2) *“Until this notice of delegation is superseded by another notice of delegation under subparagraph XX-6.2(b)(5)(iv), I agree to maintain an e-mail account and to notify the REGULATORY AGENCY or its agent immediately of any change in my e-mail address unless all delegation authority by me under paragraph*

*XX-6.2(b)(5) is terminated.”*

- (iv) A notice of delegation submitted under subparagraph (iii) of this paragraph shall be effective, with regard to the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative identified in such notice, upon receipt of such notice by the REGULATORY AGENCY or its agent and until receipt by the REGULATORY AGENCY or its agent of a superseding notice of delegation by such CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.
  - (v) Any electronic submission covered by the certification in sub-clause (iii)(d)(1) of this paragraph and made in accordance with a notice of delegation effective under subparagraph (iv) of this paragraph shall be deemed to be an electronic submission by the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative submitting such notice of delegation.
- (6) *Recordkeeping.* Unless otherwise provided, each entity that opens a general account shall keep in its possession, custody, or control each of the following documents for a period of 10 years from the date the document is created or submitted, whichever is later. Any recordkeeping period may be extended, at any time prior to the end of the period, by the REGULATORY AGENCY.
- (i) Copies of all of the applications for a general account filed by such an entity and all documents that demonstrate the truth of the statements in the application for a general account, in accordance with paragraph (1) of this subdivision, provided that the application and documents shall be retained beyond such 10-year period until such documents are superseded because of the submission of a new application for a general account changing the CO<sub>2</sub> authorized

account representative or CO<sub>2</sub> authorized alternate account representative.

- (ii) Copies of all reports and other submissions and all records made or required under this Part.
- (iii) Copies of all documents used to complete any submission under this Part or to demonstrate compliance with the requirements of this Part, provided that all material received, reviewed, or generated to provide a consistency application, monitoring and verification report, notice, or other submittal for an offset project, application for qualification, or other information under this Part shall be retained for 10 years from submission of the application, report, notice, other submittal, or information.

(c) *Reporting accounts.* Upon receipt of a complete account certificate of representation under section XX-2.4, the REGULATORY AGENCY or its agent will establish a reporting account for each JURISDICTION fuel supplier or reporting-only entity for which the account certificate of representation was submitted.

(d) *Account identification.* The REGULATORY AGENCY or its agent will assign a unique identifying number to each account established under subdivisions (a) - (c) of this section.

### **XX-6.3      Transportation Registration, Emissions, and Allowance Tracking System responsibilities of CO<sub>2</sub> authorized account representative.**

Following the establishment of any type of TREATS account, all submissions to the REGULATORY AGENCY or its agent pertaining to the account, including, but not limited to, data reported pursuant to Subparts XX-8 and XX-9 and submissions concerning the deduction or transfer of CO<sub>2</sub> allowances in the account, shall be made only by the CO<sub>2</sub> authorized account representative for the account.

#### **XX-6.4      Recordation of CO<sub>2</sub> allowance allocations.**

(a) By January 1 of each calendar year, the REGULATORY AGENCY or its agent will record the allocations of CO<sub>2</sub> allowances into the accounts as specified in Subpart XX-5 for the calendar year.

(b) *Serial numbers for allocated CO<sub>2</sub> allowances.* When allocating CO<sub>2</sub> allowances to and recording them in an account, the REGULATORY AGENCY or its agent will assign each CO<sub>2</sub> allowance a unique number that will include digits identifying the calendar year for which the CO<sub>2</sub> allowance is allocated.

#### **XX-6.5      Compliance.**

(a) *Allowances available for compliance deduction.* CO<sub>2</sub> allowances that meet the following criteria are available to be deducted in order for a JURISDICTION fuel supplier to comply with the CO<sub>2</sub> requirements of subdivision XX-1.5(b) for a control period or an interim control period.

- (1) The CO<sub>2</sub> allowances, other than CO<sub>2</sub> offset allowances, are of allocation years that fall within a prior control period, the same control period, or the same interim control period for which the allowances will be deducted.
- (2) The CO<sub>2</sub> allowances are held in the JURISDICTION fuel supplier's compliance account as of the CO<sub>2</sub> allowance transfer deadline for that control period or interim control period or are transferred into the compliance account by a CO<sub>2</sub> allowance transfer correctly submitted for recordation under section XX-7.1 by the CO<sub>2</sub> allowance transfer deadline for that control period or interim control period.
- (3) For CO<sub>2</sub> offset allowances, the number of CO<sub>2</sub> offset allowances that are available to be deducted in order for a JURISDICTION fuel supplier to comply with the CO<sub>2</sub> requirements of subdivision XX-1.5(b) for a control period or an interim control period may not exceed 3.3 percent of the

JURISDICTION fuel supplier's CO<sub>2</sub> emissions for that control period, or 3.3 percent of 0.50 times the JURISDICTION fuel supplier's CO<sub>2</sub> emissions for an interim control period, as determined in accordance with this Subpart and Subparts XX-8 and XX-9.

- (4) The CO<sub>2</sub> allowances are not necessary for deductions for CO<sub>2</sub> excess emissions for a prior control period under subdivision (d) of this section.

(b) *Deductions for compliance.* Following the recordation, in accordance with section XX-7.2, of CO<sub>2</sub> allowance transfers submitted for recordation in the JURISDICTION fuel supplier's compliance account by the CO<sub>2</sub> allowance transfer deadline for a control period or interim control period, the REGULATORY AGENCY or its agent will deduct CO<sub>2</sub> allowances available under subdivision (a) of this section to cover the JURISDICTION fuel supplier's CO<sub>2</sub> emissions (as determined in accordance with Subparts XX-8 and XX-9) for the control period or interim control period, as follows:

- (1) Until the amount of CO<sub>2</sub> allowances deducted equals the metric tonnage of total CO<sub>2</sub> emissions for a control period (or 0.50 times the metric tonnage of total CO<sub>2</sub> emissions for an interim control period), determined in accordance with Subparts XX-8 and XX-9; or
- (2) If there are insufficient CO<sub>2</sub> allowances to complete the deductions in paragraph (b)(1) of this section, until no more CO<sub>2</sub> allowances available under subdivision (a) of this section remain in the compliance account.

(c) *Identification of available CO<sub>2</sub> allowances by serial number; default compliance deductions.*

- (1) The CO<sub>2</sub> authorized account representative for a JURISDICTION fuel supplier's compliance account may request that specific CO<sub>2</sub> allowances, identified by serial number, in the compliance account be deducted for CO<sub>2</sub> emissions or CO<sub>2</sub> excess emissions for a control period or interim control period in accordance with subdivision (b) or (d) of this section. Such identification shall be made in the compliance certification report

submitted in accordance with section XX-4.1.

- (2) The REGULATORY AGENCY or its agent will deduct CO<sub>2</sub> allowances for a control period or interim control period from the JURISDICTION fuel supplier's compliance account, in the absence of an identification or in the case of a partial identification of available CO<sub>2</sub> allowances by serial number under paragraph (1) of this subdivision, in the following order:

- (i) First, subject to the relevant compliance deduction limitations under paragraphs (a)(3) and (d)(1) of this section, CO<sub>2</sub> offset allowances. CO<sub>2</sub> offset allowances shall be deducted in chronological order (i.e., CO<sub>2</sub> offset allowances from earlier allocation years shall be deducted before CO<sub>2</sub> offset allowances from later allocation years). In the event that some, but not all, CO<sub>2</sub> offset allowances from a particular allocation year are to be deducted, CO<sub>2</sub> offset allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.
- (ii) Second, any CO<sub>2</sub> allowances, other than CO<sub>2</sub> offset allowances, that are available for deduction under subdivision (a) of this section. CO<sub>2</sub> allowances shall be deducted in chronological order (i.e., CO<sub>2</sub> allowances from earlier allocation years shall be deducted before CO<sub>2</sub> allowances from later allocation years).
- (iii) In the event that some, but not all, CO<sub>2</sub> allowances from a particular allocation year are to be deducted, CO<sub>2</sub> allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(d) *Deductions for CO<sub>2</sub> excess emissions.*

- (1) After making the deductions for compliance under subdivision (b) of this section, the REGULATORY AGENCY or its agent will deduct from the JURISDICTION fuel supplier's compliance account a number of CO<sub>2</sub> allowances, equal to three times the number of the JURISDICTION fuel supplier's CO<sub>2</sub> excess emissions. In the event that a JURISDICTION fuel

supplier has insufficient CO<sub>2</sub> allowances to cover three times the number of the CO<sub>2</sub> excess emissions, the JURISDICTION fuel supplier shall be required to immediately transfer sufficient CO<sub>2</sub> allowances into its compliance account. No CO<sub>2</sub> offset allowances may be deducted to account for the JURISDICTION fuel supplier's CO<sub>2</sub> excess emissions.

(2) Any CO<sub>2</sub> allowance deduction required under paragraph (1) of this subdivision shall not affect the liability of the JURISDICTION fuel supplier for any fine, penalty, or assessment, or its obligation to comply with any other remedy, for the same violation, as ordered under applicable JURISDICTION law. The following guidelines will be followed in assessing fines, penalties, or other obligations.

(i) For purposes of determining the number of days of violation, if a JURISDICTION fuel supplier has CO<sub>2</sub> excess emissions for a control period, each day in the control period constitutes a day in violation unless the JURISDICTION fuel supplier demonstrates that a lesser number of days should be considered.

(ii) Each metric ton of CO<sub>2</sub> excess emissions is a separate violation.

(iii) For purposes of determining the number of days of violation, if a JURISDICTION fuel supplier has CO<sub>2</sub> excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the JURISDICTION fuel supplier demonstrates that a lesser number of days should be considered.

(iv) Each metric ton of CO<sub>2</sub> excess interim emissions is a separate violation.

(3) The propriety of the REGULATORY AGENCY's determination that a JURISDICTION fuel supplier had CO<sub>2</sub> excess emissions and the concomitant deduction of CO<sub>2</sub> allowances from that JURISDICTION fuel supplier'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 CO<sub>2</sub> excess emissions violation. The

commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that CO<sub>2</sub> excess emissions violation, will not act to prevent the REGULATORY AGENCY or its agent from initially deducting the CO<sub>2</sub> allowances resulting from the REGULATORY AGENCY's original determination that the relevant JURISDICTION fuel supplier has had CO<sub>2</sub> excess emissions. Should the REGULATORY AGENCY's determination of the existence or extent of the JURISDICTION fuel supplier's CO<sub>2</sub> excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the REGULATORY AGENCY will act as follows.

- (i) In any instance where the REGULATORY AGENCY's determination of the extent of CO<sub>2</sub> excess emissions was too low, the REGULATORY AGENCY will take further action under paragraphs (1) and (2) of this subdivision to address the expanded violation.
- (ii) In any instance where the REGULATORY AGENCY's determination of the extent of CO<sub>2</sub> excess emissions was too high, the REGULATORY AGENCY will distribute to the relevant JURISDICTION fuel supplier a number of CO<sub>2</sub> allowances equaling the number of CO<sub>2</sub> allowances deducted that are attributable to the difference between the original and final quantity of CO<sub>2</sub> excess emissions. Should such JURISDICTION fuel supplier's compliance account no longer exist, the CO<sub>2</sub> allowances will be provided to a general account selected by the JURISDICTION fuel supplier from which they were originally deducted.

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

(f) *Action by the REGULATORY AGENCY on submissions.*

- (1) The REGULATORY AGENCY or its agent may review and conduct



independent audits concerning any submission under this Part, and the REGULATORY AGENCY may make appropriate adjustments of the information in the submissions.

- (2) The REGULATORY AGENCY or its agent may deduct CO<sub>2</sub> allowances from or transfer CO<sub>2</sub> allowances to a JURISDICTION fuel supplier's compliance account based on information in the submissions, as adjusted under paragraph (1) of this subdivision.

#### **XX-6.6      Banking.**

Each CO<sub>2</sub> allowance that is held in a compliance account or a general account will remain in such account unless and until the CO<sub>2</sub> allowance is deducted or transferred under section XX-4.2, section XX-6.5, section XX-6.7, or Subpart XX-7.

#### **XX-6.7      Account error.**

The REGULATORY AGENCY or its agent may, at its sole discretion and on his or her own motion, correct any error in any TREATS account. Within 10 days of making such correction, the REGULATORY AGENCY or its agent will notify the CO<sub>2</sub> authorized account representative for the account.

#### **XX-6.8      Closing of general accounts.**

(a) A CO<sub>2</sub> authorized account representative of a general account may instruct the REGULATORY AGENCY or its agent to close the account by submitting a statement requesting closing of the account and by correctly submitting for recordation under section XX-7.1 a CO<sub>2</sub> allowance transfer of all CO<sub>2</sub> allowances in the account to one or more other TREATS accounts.

(b) If a general account shows no activity for a period of one year or more and does

not contain any CO<sub>2</sub> allowances, the REGULATORY AGENCY or its agent may notify the CO<sub>2</sub> authorized account representative for the account that the account will be closed in the TREATS after 30 days from the date that the notice is sent. The account will be closed after the 30-day period unless before the end of the 30-day period the REGULATORY AGENCY or its agent receives a correctly submitted transfer of CO<sub>2</sub> allowances into the account under section XX-7.1 or a statement submitted by the CO<sub>2</sub> authorized account representative demonstrating to the satisfaction of the REGULATORY AGENCY good cause why the account should not be closed. The REGULATORY AGENCY has sole discretion to determine if the owner of the account demonstrated that the account should not be closed.

(c) When a general account is closed under this section, the entity that opened the general account shall no longer be subject to the requirement to have a CO<sub>2</sub> authorized account representative under paragraph XX-6.2(b)(1) and shall keep records as required under paragraph XX-6.2(b)(6).

#### **XX-6.9 Closing of certain reporting accounts**

(a) If the number of deliveries or disbursements that a below-the-rack distributor or position holder that is a reporting-only entity is required to report is zero for a period of one year or more, or if a distributor or position holder that is a reporting-only entity that is not required to report deliveries or disbursements does not submit any fuel shipment data reports for a period of one year or more, the distributor or position holder may request that its reporting account be closed. The REGULATORY AGENCY or its agent may require submission of additional information relevant to the request and may close such reporting account if the REGULATORY AGENCY determines that the request meets the requirements of this subdivision. Starting on the date on which the reporting account is closed, the distributor or position holder shall no longer be a reporting-only entity unless and until it again qualifies as a reporting-only entity.

(b) An operator of a terminal not located in JURISDICTION that elected to comply

with the requirements applicable to operators of terminals located in JURISDICTION and wants to terminate its election may request, before the third year of a control period, that its reporting account be closed as of the first day of the control period after the date of the request. The REGULATORY AGENCY or its agent may require submission of additional information relevant to the request and may close such reporting account if the REGULATORY AGENCY determines that the request meets the requirements of this subdivision. Starting on the date on which the reporting account is closed, the terminal not located in JURISDICTION shall no longer be a reporting terminal unless and until an operator of the terminal elects to comply with the requirements applicable to operators of terminals located in JURISDICTION.

(c) If a below-the-rack distributor or position holder that is a reporting-only entity only under paragraph (1), (2), or (3) of the definition of “reporting-only entity” in section XX-1.2 does not submit any fuel shipment data reports for a period of one year or more, the REGULATORY AGENCY or its agent may notify the CO2 authorized account representative for the distributor’s or position holder’s reporting account that the account will be closed after 30 days from the date that the notice is sent. The account will be closed after the 30-day period, unless before the end of the 30-day period the REGULATORY AGENCY or its agent receives a statement submitted by the CO2 authorized account representative demonstrating to the satisfaction of the REGULATORY AGENCY good cause why the account should not be closed. The REGULATORY AGENCY has sole discretion to determine if the distributor or position holder demonstrated that the account should not be closed. Starting on the date on which the reporting account is closed, the distributor or position holder shall no longer be a reporting-only entity unless and until it again qualifies as a reporting-only entity.

(d) When a reporting account of a below-the-rack distributor, position holder, or terminal operator is closed under this section, the distributor, position holder, or terminal operator shall no longer be subject to the requirements to have a CO2 authorized account representative and an updated list of owners and operators under subdivisions

XX-2.1(a) and XX-2.3(c) and shall keep records as required under paragraph XX-1.6(b)(1).

## **Subpart XX-7      CO<sub>2</sub> Allowance Transfers**

### **XX-7.1      Submission of CO<sub>2</sub> allowance transfers.**

The CO<sub>2</sub> authorized account representatives seeking recordation of a CO<sub>2</sub> allowance transfer shall submit the transfer to the REGULATORY AGENCY or its agent. To be considered correctly submitted, the CO<sub>2</sub> allowance transfer shall include the following elements in a format prescribed by the REGULATORY AGENCY:

- (a)    The numbers identifying both the transferor and transferee accounts;
- (b)    A specification by serial number of each CO<sub>2</sub> allowance to be transferred;
- (c)    The date of the completion of the last sale or purchase transaction for each CO<sub>2</sub> allowance, if any; and
- (d)    The purchase or sale price of the CO<sub>2</sub> allowance that is the subject of a sale or purchase transaction under subdivision (c) of this section.
- (e)    A signed and dated certification statement provided by the CO<sub>2</sub> authorized account representative of the transferor account as required in subdivision XX-2.1(e) or subparagraph XX-6.2(b)(2)(i), as applicable.

### **XX-7.2      Recordation.**

- (a)    Within 5 days of receiving a CO<sub>2</sub> allowance transfer, except as provided in subdivision (b) of this section, the REGULATORY AGENCY or its agent will record a

CO<sub>2</sub> allowance transfer by moving each CO<sub>2</sub> allowance from the transferor account to the transferee account as specified by the request, provided that the transfer is correctly submitted under section XX-7.1; and

- (1) The transferor account includes each CO<sub>2</sub> allowance identified by serial number in the transfer.
- (2) A CO<sub>2</sub> allowance transfer into or out of a compliance account that is submitted for recordation following the CO<sub>2</sub> allowance transfer deadline and that includes any CO<sub>2</sub> 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 CO<sub>2</sub> allowance transfer deadline applies will not be recorded until after completion of the process pursuant to subdivision XX-6.5(b).

(b) Where a CO<sub>2</sub> allowance transfer submitted for recordation fails to meet the requirements of subdivision (a) of this section, the REGULATORY AGENCY or its agent will not record such transfer.

### **XX-7.3 Notice of Recordation.**

(a) *Notice of recordation.* Within 5 days of recordation of a CO<sub>2</sub> allowance transfer under section XX-7.2, the REGULATORY AGENCY or its agent will provide notice to each party to the transfer. Notice will be given to the CO<sub>2</sub> authorized account representatives of both the transferor and transferee accounts.

(b) *Notice of non-recordation.* Within 10 days of receipt of a CO<sub>2</sub> allowance transfer that fails to meet the requirements of subdivision XX-7.2(a), the REGULATORY AGENCY or its agent will provide notice to the CO<sub>2</sub> authorized account representatives of both accounts subject to the transfer of:

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

- (c) Nothing in this section shall preclude the submission of a CO<sub>2</sub> allowance transfer for recordation following notice of non-recordation.

## **Subpart XX-8 CO<sub>2</sub> Emissions Reporting**

### **XX-8.1 CO<sub>2</sub> emissions reporting requirements for JURISDICTION fuel suppliers.**

- (a) *General.* JURISDICTION fuel suppliers must calculate CO<sub>2</sub> emissions and submit CO<sub>2</sub> emissions data reports to the REGULATORY AGENCY or its agent.
- (b) *Fuel included in CO<sub>2</sub> emissions calculations.* Each JURISDICTION fuel supplier shall calculate CO<sub>2</sub> emissions under section XX-8.2, using fuel shipment data that it reports or is required to report under section XX-8.3, as follows:
- (1) A position holder shall use the product code (indicating whether the shipment is motor gasoline or on-road diesel fuel), net fuel quantity, and biomass-derived content as a percent for the transportation fuel that it disbursed to JURISDICTION, provided that the following disbursements shall be excluded from the calculation:
    - (i) Those disbursements that were made from a reporting terminal, and for which a fuel shipment data report is submitted under section XX-8.3 documenting that the fuel was not delivered to JURISDICTION.
    - (ii) Those disbursements that were made from a terminal that is not a reporting terminal, and for which the position holder did not receive a notification under section XX-8.4
  - (2) A below-the-rack distributor shall use the product code (indicating whether the shipment is motor gasoline or on-road diesel fuel), net fuel quantity, and biomass-derived content as a percent for the transportation fuel that it

delivered to JURISDICTION, provided that the following shipments shall be excluded from the calculation:

- (i) Those shipments that were disbursed to JURISDICTION from a reporting terminal.
- (ii) Those shipments that were disbursed to JURISDICTION from a terminal that is not a reporting terminal, and for which a notification is provided to a position holder under section XX-8.4 concerning the disbursed fuel.

(c) *Non-submitted CO<sub>2</sub> Emissions Data Reports.* When a JURISDICTION fuel supplier fails to submit a CO<sub>2</sub> emissions data report as required under this section and section XX-8.2, the REGULATORY AGENCY may develop an assigned CO<sub>2</sub> emissions level for the JURISDICTION fuel supplier based on any information that the REGULATORY AGENCY deems relevant, including, but not limited to, conservative missing data parameters, the operations of the supplier during the quarter covered by the report, any previous CO<sub>2</sub> emissions data reports submitted by the supplier and verification statements rendered for such reports, the CO<sub>2</sub> emissions calculation methodology in paragraph XX-8.2(c)(5), any submissions to other agencies, and any information reported under this Subpart, for estimating the quantity of CO<sub>2</sub> emissions that should have been reported. The REGULATORY AGENCY will notify the JURISDICTION fuel supplier of its determination of an assigned CO<sub>2</sub> emissions level and the basis for the determination.

**[Each REGULATORY AGENCY will add language to its specific TCI-P regulation for a process for requests by regulated entities for review of the agency decision related to assigned CO<sub>2</sub> emissions in accordance with the procedural pathways provided for review of similar agency decisions.]**

**XX-8.2 CO<sub>2</sub> emissions data report contents and mechanism for JURISDICTION fuel suppliers.**

(a) *General.* JURISDICTION fuel suppliers must submit CO<sub>2</sub> emissions data reports required under section XX-8.1 to the REGULATORY AGENCY or its agent using the TREATS, and must follow the procedures specified in this section when calculating and reporting CO<sub>2</sub> emissions.

(b) *Schedule.* Each JURISDICTION fuel supplier must submit a CO<sub>2</sub> emissions data report for each quarter, including any quarter for which it has no reportable disbursements or deliveries pursuant to section XX-8.3. The CO<sub>2</sub> emissions data report must be submitted no later than the last day of the second month following the quarter covered by the report (e.g., the report covering January, February, and March must be submitted by the last day of May).

(c) *Content of quarterly CO<sub>2</sub> emissions data report.* Each CO<sub>2</sub> emissions data report for a quarter shall contain the following information in a format prescribed by the REGULATORY AGENCY:

- (1) JURISDICTION fuel supplier name and compliance account number.
- (2) Quarter covered by the report.
- (3) Whether the report is a resubmittal.
- (4) Name of the CO<sub>2</sub> authorized account representative submitting the report.
- (5) Metric tons of CO<sub>2</sub> emissions from combustion of all transportation fuel disbursed or delivered to JURISDICTION during the quarter, as specified for the JURISDICTION fuel supplier in subdivision XX-8.1(b), including:
  - (i) Total quarterly CO<sub>2</sub> emissions from the combustion of fossil fuel, with CO<sub>2</sub> emissions calculated for each fuel shipment as the product of the number of net gallons of transportation fuel, the fraction of the fuel that is derived from any fossil fuel, and a CO<sub>2</sub> emissions factor.
  - (ii) Any inputs used to calculate CO<sub>2</sub> emissions including, for each fuel shipment, as specified under subdivision XX-8.1(b):
    - (a) Product code. If the product code is not specified in the applicable fuel shipment data report, a conservative missing data parameter of the diesel fuel product code shall be used,



and the fuel shall be treated as diesel fuel in clauses (c) and (d) of this subparagraph.

- (b) The number of net gallons of transportation fuel. If the number of net gallons is not specified in the applicable fuel shipment data report, a conservative missing data parameter shall be used.
- (c) The fraction, by volume, of the transportation fuel in the shipment that is derived from any fossil fuel (which equals 100% minus the biomass-derived content as a percent reported under paragraph XX-8.3(c)(12)), determined as follows:
  - (1) If the fuel is specified in the applicable fuel shipment data report to include only fuel that is derived from any fossil fuel, the fraction shall be 1.0.
  - (2) If the fuel is diesel fuel and the fraction of the fuel that is derived from any fossil fuel is not specified in the applicable fuel shipment data report, or is specified to be greater than or equal to 0.98, the percentage shall be 0.98.
  - (3) If the fuel is motor gasoline and the fraction of the fuel that is derived from any fossil fuel is not specified in the applicable fuel shipment data report, or is specified to be greater than or equal to 0.90, the percentage shall be 0.90.
  - (4) If the fraction of the fuel that is derived from any fossil fuel is specified in the applicable fuel shipment data report to be less than 0.98 (for diesel fuel), or 0.90 (for motor gasoline), a lower percentage than 0.98 or 0.90, respectively, may be used only if that specific lower percentage is specified in such report.

- (d) The CO<sub>2</sub> emissions factor applied to the fraction of the transportation fuel in each shipment that is derived from any fossil fuel, which shall be:
    - (1) For motor gasoline, 0.00878 metric tons of CO<sub>2</sub> per net gallon.
    - (2) For on-road diesel fuel, 0.01021 metric tons of CO<sub>2</sub> per net gallon.
- (6) Quantity of metric tons of CO<sub>2</sub> emissions under paragraph (5) of this subdivision whose calculation used, and the specific inputs under subparagraph (5)(ii) of this subdivision that used, a conservative missing data parameter.
- (d) *Certification.* Each CO<sub>2</sub> emissions report shall include a signed and dated certification statement provided by the CO<sub>2</sub> authorized account representative of the JURISDICTION fuel supplier as required in subdivision XX-2.1(e).

**XX-8.3 Fuel shipment data reporting requirements, content, and mechanism for JURISDICTION fuel suppliers and reporting-only entities.**

- (a) *General.* JURISDICTION fuel suppliers and reporting-only entities must submit fuel shipment data reports to the REGULATORY AGENCY or its agent using the TREATS, and must follow the procedures specified in this section when submitting a fuel shipment data report for a month.
  - (1) All position holders must report all of their disbursements to JURISDICTION in the month.
  - (2) All below-the-rack distributors must report:
    - (i) All of their deliveries to JURISDICTION in the month; provided, however, that distributors are not required to report fuel shipments

that are disbursed to JURISDICTION from a reporting terminal and delivered to JURISDICTION; and

- (ii) Any fuel shipments that are disbursed to JURISDICTION from a reporting terminal in the month and that the distributor instructs or otherwise causes to be delivered to a destination that is not a filling station in JURISDICTION.

- (3) All operators of reporting terminals must report all disbursements from their respective terminals in the month for which the destination jurisdiction or a destination address listed on the shipping document at the time of disbursement was JURISDICTION or was located in JURISDICTION.
- (4) Any position holder or distributor may for any reason submit fuel shipment data or a fuel shipment data report not otherwise required to be submitted under this section, including to document fuel shipments that were not delivered to JURISDICTION.
- (5) Data must be submitted as listed on the bill of lading or other shipping document that accompanies the fuel shipment.

(b) *Schedule.* Fuel shipment data reports must be submitted in accordance with the following:

- (1) A position holder must submit a report for each month in which it has one or more reportable disbursements under paragraph (a)(1) of this section, but is not required to submit such a report for a month with no such reportable disbursements. The fuel shipment data report must be submitted by the last day of the month following the month covered by the report.
- (2) A below-the-rack distributor must submit a report for each month in which it has one or more reportable deliveries under paragraph (a)(2)(i) or (ii) of this section, but is not required to submit such a report for a month with no such reportable deliveries. The fuel shipment data report, including any associated

notification to a position holder under section XX-8.4, must be submitted by the 10th day of the second month following the month covered by the report (e.g., the report covering January must be submitted by March 10).

- (i) Using the TREATS, the position holder must accept a late notification until the 20th day of that second following month, and may, at its sole discretion, accept a late notification until the last day of February in the following calendar year. After a position holder accepts a late notification, then the position holder and, if necessary, the distributor shall resubmit CO<sub>2</sub> emissions data reports for the quarter in which the shipment was delivered to JURISDICTION. CO<sub>2</sub> emissions data reports resubmitted as a result of late notifications must be submitted by the last day of February in that following year.
  - (ii) If a notification was required for a shipment but was not submitted by the 20th day of that second following month or accepted as a late notification by a position holder, then the distributor and not the position holder shall report the CO<sub>2</sub> emissions.
- (3) An operator of a reporting terminal must submit a report for each month, including any month in which it has no reportable disbursements under paragraph (a)(3) of this section. The fuel shipment data report must be submitted by the last day of the month following the month covered by the report.
- (c) *Content of monthly fuel shipment data report.* Each fuel shipment data report shall contain the information specified in paragraphs (1) – (19) of this subdivision for each shipment, and any associated notification shall contain the information specified in subdivision XX-8.4(b), in a format prescribed by the REGULATORY AGENCY. In the fuel shipment data report, if any of the information in paragraphs (7) – (15) of this subdivision is not specified in the bill of lading or other shipping document for a fuel

shipment or if any of the information in paragraphs (16) – (19) of this subdivision is not applicable, “N/A” shall be reported.

- (1) Name and identification number of the JURISDICTION fuel supplier or reporting-only entity submitting the fuel shipment data report.
- (2) Month covered by the report.
- (3) Whether the report is a resubmittal.
- (4) Shipping document number, date of issuance, and, for a corrected document treated as the shipping document accompanying a disbursed shipment, date that the shipping document was corrected, if different.
- (5) Destination jurisdiction.
- (6) Origination address.
- (7) Name and identification number of the terminal from which the fuel was disbursed.
- (8) Name and identification number of the carrier transporting the fuel.
- (9) Name and identification number of the consignee and consignor (shipper) for the shipment.
- (10) Name and identification number of any other JURISDICTION fuel supplier(s) listed on the shipping document.
- (11) Product code, indicating whether the shipment is motor gasoline or on-road diesel fuel.
- (12) Biomass-derived content as a percent.
- (13) Net fuel quantity in gallons.
- (14) Gross fuel quantity in gallons.
- (15) Destination address.

- (16) Identification of, and explanation for, any data elements for which a conservative missing data parameter was used.
  - (17) If the fuel shipment data report is submitted by a position holder, whether the destination address for the shipment is a fuel storage facility, or portion of a fuel storage facility, that is not a filling station and whether the destination address for the shipment changed after issuance of the shipping document from being a filling station and, if so, the reason for the change.
  - (18) If the fuel shipment data report is submitted by a below-the rack distributor, and the shipment was delivered to JURISDICTION and is not subject to the notification requirement under section XX-8.4, identification of at least one of the following reasons for the lack of notification:
    - (i) The destination jurisdiction was not JURISDICTION.
    - (ii) The origination address is a fuel storage facility that is not a terminal.
    - (iii) The origination address is outside the United States.
    - (iv) The origination address is a reporting terminal.
  - (19) Whether the destination jurisdiction for the shipment changed after issuance of the shipping document and, if so, the reason for the change.
- (d) *Certification.* Each fuel shipment data report shall include a signed and dated certification statement provided by the CO<sub>2</sub> authorized account representative of the JURISDICTION fuel supplier or reporting-only entity, as applicable as required in subdivision XX-2.1(e).
- (e) *Specification of destination jurisdiction.* JURISDICTION fuel suppliers shall ensure that a destination jurisdiction is included in the shipping documents that accompany fuel shipments to filling stations in JURISDICTION consistent with the provisions of 49 CFR 373.101, as that section existed on October 4, 2016.

#### **XX-8.4 Notification.**

(a) When a below-the rack distributor delivers to JURISDICTION transportation fuel that was disbursed to JURISDICTION from a terminal that is not a reporting terminal, the distributor must provide a notification of the delivery to the position holder that made the disbursement and to the REGULATORY AGENCY or its agent using the TREATS.

(b) *Schedule.* The notification deadline is the 10th day of the second month following the month of the delivery, as specified in paragraph XX-8.3(b)(2).

(c) *Content of the notification.* The notification shall include:

- (1) The document number associated with the fuel shipment that is the subject of the notification, and any other information that may be necessary to positively identify that shipment.
- (2) A list of discrepancies, if any, with regard to the fuel shipment that is the subject of the notification between the distributor's fuel shipment data report and the position holder's fuel shipment data report.

(d) *Certification.* Each notification shall include a signed and dated certification statement provided by the CO<sub>2</sub> authorized account representative of the below-the-rack distributor as required in subdivision XX-2.1(e).

(e) With respect to a fuel shipment that is subject to notification, if a position holder that disburses to JURISDICTION, and a below-the-rack distributor that delivers to JURISDICTION, are the same entity, then the JURISDICTION fuel supplier must report the fuel shipment in a fuel shipment data report as a position holder and as a distributor pursuant to section XX-8.3, provide a notification as a distributor pursuant to this section, and calculate and report the CO<sub>2</sub> emissions as a position holder pursuant to sections XX-8.1 and XX-8.2.

## **XX-8.5 Confidentiality.**

- (a) Submitted CO<sub>2</sub> emissions data reports are public information and shall not be designated as confidential.

**[TCI-P participating jurisdictions may insert provisions related to the confidentiality of fuel shipment data reports. The participating jurisdictions intend for fuel shipment data reports to be maintained as confidential to the degree allowable by law.]**

## **Subpart XX-9 Reporting verification requirements**

### **XX-9.1 Requirements for verification of CO<sub>2</sub> emissions data reports.**

JURISDICTION fuel suppliers must obtain the services of an accredited verification body for purposes of verifying the CO<sub>2</sub> emissions data reports submitted for each calendar year under Subpart XX-8 or this Subpart.

- (a) *Verification requirement and deadlines.* Verification services with regard to the CO<sub>2</sub> emissions data reports submitted for a calendar year must be completed, and a verification statement must be submitted by the verification body to the REGULATORY AGENCY or its agent, by May 1 after such year. Each JURISDICTION fuel supplier must ensure that the verification statement is submitted by this deadline. Contracting with a verification body without providing sufficient time to complete the verification statement by the applicable deadline will not excuse the JURISDICTION fuel supplier from this responsibility.

- (b) *Annual verification.*

- (1) JURISDICTION fuel suppliers are subject to full verification requirements in



the first calendar year that verification is required in each control period. Upon receiving a positive verification statement under full verification requirements, the JURISDICTION fuel supplier may choose to obtain less intensive verification services for the remaining calendar years of the control period. JURISDICTION fuel suppliers are also required to obtain full verification services if any of the following apply:

- (i) A different verification body is used for the calendar year than was used for the previous calendar year;
  - (ii) An adverse verification statement or qualified positive verification statement was issued for the previous calendar year;
  - (iii) A change of operational control of the JURISDICTION fuel supplier occurred in the previous calendar year.
  - (iv) Nothing in this paragraph shall be construed as preventing a verification body from performing a full verification in instances where there are changes in CO<sub>2</sub> emissions. The verification body must provide information on the causes of the CO<sub>2</sub> emission changes and justification in the verification report if a full verification was not conducted in instances where the total reported CO<sub>2</sub> emissions differ by greater than 25 percent relative to the preceding calendar year's CO<sub>2</sub> emissions.
- (2) JURISDICTION fuel suppliers shall not use the same verification body or verifier(s) for a period of more than six consecutive years.
  - (i) The six-year period begins on the date the JURISDICTION fuel supplier or its agent first contracts for any third-party verifications, validations, or audits that include types of disbursements or deliveries reportable in a CO<sub>2</sub> emissions data report and ends on the date the last verification statement is submitted in the period. Verification bodies may not provide verification services if the six-year period ends prior to sixty days after the last CO<sub>2</sub> emissions data report in the period is submitted by the JURISDICTION fuel supplier to the REGULATORY AGENCY or its

agent, unless a verification plan is agreed to by the JURISDICTION fuel supplier, the verification body, and the REGULATORY AGENCY. If the six-year time limit is exceeded, the JURISDICTION fuel supplier must engage a different verification body and meet the verification deadline. Even if these services are provided before the verification body or verifiers have received REGULATORY AGENCY accreditation, the six-year period still begins when these services are contracted for, if accreditation is later received.

- (ii) The six-year limit also applies to verification bodies and verifiers providing the REGULATORY AGENCY or any other third-party verifications, validations, or audits that include the scope of activities or operations covered by the CO<sub>2</sub> emissions data reports and does not reset upon a change in JURISDICTION fuel supplier ownership or operational control.

(iii) If a JURISDICTION fuel supplier is required or elects to contract with another verification body or verifier(s), the JURISDICTION fuel supplier may contract verification services from the previous verification body or verifier(s) only after not using the previous verification body or verifier(s) for at least three years.

(iv) If a JURISDICTION fuel supplier is required to select a new verification body to verify the CO<sub>2</sub> emissions data reports that have been set aside pursuant to subdivision XX-9.2(e), the JURISDICTION fuel supplier may continue to contract for verification services with that new verification body, subject to the six-year time limit.

## **XX-9.2 Requirements for verification services.**

Verification services shall be rendered by an accredited verification body subject to the following requirements.

(a) *Notice of verification services.* After the REGULATORY AGENCY has provided a determination that the potential for a conflict of interest is acceptable as specified in subdivision XX-9.4(f) and that verification services may proceed, the verification body shall submit a notice of verification services to the REGULATORY AGENCY. The notice shall include the following information:

- (1) A list of the staff who will be designated to provide verification services as a verification team, including the names of each designated staff member, the lead verifier, and all subcontractors, and a description of the roles and responsibilities each member will have during verification.
- (2) Documentation that the verification team has the skills required to provide verification services for the JURISDICTION fuel supplier. This shall include a demonstration that a verification team includes at least one member accredited as a fuels specific verifier that is not also the lead verifier independent reviewer.
- (3) General information on the JURISDICTION fuel supplier, including:
  - (i) The name and identification number of the JURISDICTION fuel supplier and the locations that will be subject to verification services, JURISDICTION fuel supplier contact, address, telephone number, and e-mail address;
  - (ii) The date(s) of the site visit, if required in paragraph XX-9.1(b)(1), with site address and contact information; and
  - (iii) A brief description of expected verification services to be performed, including expected completion date.
- (4) If any of the information under paragraph (1) or (3) of this subdivision changes after the notice is submitted to the REGULATORY AGENCY, the verification body must notify the REGULATORY AGENCY by submitting an updated conflict of interest self-evaluation form and updated notice of verification services as soon as the change is made. The conflict of interest must be reevaluated pursuant to

paragraph XX-9.4(f) and the REGULATORY AGENCY must approve any changes.

- (b) Verification services shall include, but are not limited to, the following:
  - (1) *Verification plan.* The verification team shall develop a verification plan based on the following:
    - (i) *Information from the JURISDICTION fuel supplier.* Such information shall include:
      - (a) Information to allow the verification team to develop a general understanding of the supplier's fuel shipments and CO<sub>2</sub> emissions;
      - (b) Information regarding the training or qualifications of personnel involved in developing the CO<sub>2</sub> emissions data reports and fuel shipment data reports;
      - (c) Description of the specific methodologies used to quantify and report CO<sub>2</sub> emissions, fuel shipments, and associated data as needed to develop the verification plan;
      - (d) Information about the data management system used to track CO<sub>2</sub> emissions, fuel shipments, and associated data as needed to develop the verification plan; and
      - (e) Previous verification reports.
    - (ii) *Timing of verification services.* Such information shall include:
      - (a) Dates of proposed meetings and interviews with JURISDICTION fuel supplier or other personnel;
      - (b) Dates of proposed site visits;
      - (c) Types of proposed document and data reviews; and
      - (d) Expected date for completing verification services.
  - (2) *Planning meetings with the JURISDICTION fuel supplier.* The verification team shall discuss with the JURISDICTION fuel supplier the scope of the verification services and request any information and documents needed for initial verification services. The verification team shall create a draft sampling plan and verification plan prior to the site visit during full

verification. The verification team shall also review the documents submitted and plan and conduct a review of original documents and supporting data for the CO<sub>2</sub> emissions data reports.

- (3) *Site visits.* At least one accredited verifier in the verification team, including the fuels specific verifier, shall at a minimum make one site visit during each calendar year full verification is required, to the supplier's headquarters or other location of central data management. During the site visit, the verification team member(s) shall conduct the following:
  - (i) The verification team member(s) shall review and understand the data management systems used by the JURISDICTION fuel supplier to track, quantify, and report CO<sub>2</sub> emissions and fuel shipments. The verification team member(s) shall evaluate the uncertainty and effectiveness of these systems.
  - (ii) The verification team shall carry out tasks that, in the professional judgment of the team, are needed in the verification process, including the following:
    - (a) Interviews with key personnel, as well as staff involved in compiling data and preparing the CO<sub>2</sub> emissions data reports;
    - (b) Assessing conformance with missing data substitution requirements in subdivision XX-8.1(c) or XX-8.2(c); and
    - (c) Reviewing financial transactions to confirm fuel shipments and confirming the complete and accurate reporting of required data such as fuel quantities disbursed or delivered.
- (4) *Other JURISDICTION fuel supplier information.* JURISDICTION fuel suppliers shall make available to the verification team all information and documentation used to calculate and report CO<sub>2</sub> emissions, fuel shipments, and other information required under this Part.
- (5) *Sampling plan.* As part of confirming CO<sub>2</sub> emissions or fuel shipments, the verification team shall develop a sampling plan that meets the following requirements:

- (i) The verification team shall develop a sampling plan based on a strategic analysis developed from document reviews and interviews to assess the likely nature, scale and complexity of the verification services for the JURISDICTION fuel supplier. The analysis shall review the inputs for the development of the submitted CO<sub>2</sub> emissions data reports, the rigor and appropriateness of data management systems, and the coordination within the JURISDICTION fuel supplier's organization to manage systems used to develop CO<sub>2</sub> emissions data reports.
- (ii) The verification team shall include in the sampling plan an evaluation of fuel shipments relative to the amount of contribution to total CO<sub>2</sub> emissions for the JURISDICTION fuel supplier, and an evaluation of fuel shipments with the largest uncertainty in the calculation of CO<sub>2</sub> emissions. Fuel shipments shall also be evaluated relative to the amount of fuel and reporting uncertainties that may apply to data provided by the JURISDICTION fuel supplier including risk of incomplete reporting. The sampling plan shall also include a qualitative narrative of uncertainty risk assessment in data processing, tracking, and reporting and management policies or practices in developing CO<sub>2</sub> emissions data reports.
- (iii) After completing the analyses required by subparagraphs (i) and (ii) of this paragraph, the verification team shall include in the sampling plan a list which includes the following:
  - (a) Fuel shipments that will be targeted for document reviews, and data checks as specified in paragraph (b)(6) of this section, and an explanation of why they were chosen;
  - (b) Methods used to conduct data checks for each fuel shipment; and

- (c) A summary of the information analyzed in the data checks and document reviews conducted for each fuel shipment targeted.
  - (iv) The sampling plan list must be updated and finalized prior to the completion of verification services. The final sampling plan must describe in detail how the identified risks were addressed during the verification.
  - (v) The verification team shall revise the sampling plan to describe tasks completed by the verification team as information becomes available and potential issues emerge with material misstatement or nonconformance with the requirements of this Part.
  - (vi) The verification body shall retain the sampling plan in written, electronic, or other format for a period of 10 years following the submission of the verification statement. The sampling plan shall be made available to the REGULATORY AGENCY upon request.
  - (vii) The verification body shall keep in its possession, custody, or control all verification statements or other information submitted under this Part, and all material received, reviewed, or generated to render a verification statement for a JURISDICTION fuel supplier or provide the information, for 10 years from submission of the verification statement or information. The documentation must allow for a transparent review of how a verification body reached its conclusion in the verification statement. Any recordkeeping period may be extended, at any time prior to the end of the period, by the REGULATORY AGENCY.
- (6) *Data checks.* To determine the reliability of the submitted CO<sub>2</sub> emissions data reports, the verification team shall use data checks. Such data checks shall focus on the largest and most uncertain estimates of CO<sub>2</sub> emissions and fuel shipments, and shall include the following:
- (i) The verification team shall use data checks to ensure that the

appropriate product code, number of net gallons, fraction derived from any fossil fuel, emissions factor, and other data elements have been reported and applied in calculating CO<sub>2</sub> emissions for the fuel shipments.

- (ii) The verification team shall choose data checks for fuel shipments based on their relative contributions to CO<sub>2</sub> emissions and the associated risks of contributing to material misstatement or nonconformance, as indicated in the sampling plan;
- (iii) The verification team shall use professional judgment in the number of data checks required for the team to conclude with reasonable assurance whether the total reported CO<sub>2</sub> emissions are free of material misstatement. At a minimum, data checks must include the following:
  - (a) Tracing data in the CO<sub>2</sub> emissions data reports to their origin;
  - (b) Looking at the process for data compilation and collection; and
  - (c) Recalculating CO<sub>2</sub> emission estimates for fuel shipments for which inappropriate data elements were reported.
- (iv) The verification team is responsible for ensuring via data checks that there is reasonable assurance that the CO<sub>2</sub> emissions data reports conform to the requirements of this Part.
- (v) The verification team shall compare its own calculated results with the reported data in order to confirm the extent and impact of any omissions and errors. Any discrepancies must be investigated. The comparison of data checks must also include a narrative to indicate which fuel shipments were checked, the types and quantity of data that were evaluated for each fuel shipment, the percentage of reported CO<sub>2</sub> emissions covered by the data checks, and any separate discrepancies that were identified in data.



- (7) *CO<sub>2</sub> emissions data report modifications.* As a result of data checks by the verification team and prior to completion of a verification statement, the JURISDICTION fuel supplier must fix all correctable errors that affect CO<sub>2</sub> emissions in the submitted CO<sub>2</sub> emissions data reports, and resubmit a revised CO<sub>2</sub> emissions data report(s) to the REGULATORY AGENCY or its agent. Failure to do so will result in an adverse verification statement. Failure to fix misreported data that do not affect CO<sub>2</sub> emissions represents a nonconformance with this Part but does not, absent other errors, result in an adverse verification statement. The JURISDICTION fuel supplier shall retain documentation to support any revisions made to the initial CO<sub>2</sub> emissions data report(s). Documentation for all CO<sub>2</sub> emissions data reports shall be retained by the JURISDICTION fuel supplier pursuant to section XX-1.5(d)(1).
- (i) The verification team shall use professional judgment in the determination of correctable errors, including whether differences are not errors but result from truncation, rounding, or averaging.
  - (ii) The verification team must document the source of any difference identified, including whether the difference results in a correctable error or whether the difference does not require further investigation because it is the result of truncation, rounding, or averaging.
- (8) *Findings.* To verify that the CO<sub>2</sub> emissions data reports are free of material misstatements, the verification team shall make its own determination of CO<sub>2</sub> emissions for checked fuel shipments and shall determine whether there is reasonable assurance that the CO<sub>2</sub> emissions data reports do not contain a material misstatement in CO<sub>2</sub> emissions reported for the JURISDICTION fuel supplier. To assess conformance with this Part the verification team shall review the methods and factors used to develop the CO<sub>2</sub> emissions data reports for adherence to the requirements of this Part and ensure that other requirements of this Part are met.
- (9) *Log of issues.* The verification team must keep a log of any issues identified in the course of verification activities that may affect

determinations of material misstatement and nonconformance, whether identified by the verifier or by the JURISDICTION fuel supplier regarding the original or resubmitted CO<sub>2</sub> emissions data reports, or identified by REGULATORY AGENCY staff. The issues log must identify the regulatory section related to the nonconformance or potential nonconformance, if applicable, and indicate if the issues were corrected by the JURISDICTION fuel supplier prior to completion of the verification. Any other concerns that the verification team has with the preparation of the CO<sub>2</sub> emissions data reports must be documented in the issues log and communicated to the JURISDICTION fuel supplier during the course of verification activities. The log of issues must indicate whether each issue has a potential bearing on material misstatement, nonconformance, or both and whether an adverse verification statement may result if not addressed.

- (10) *Material misstatement assessment.* Assessments of material misstatement are conducted on total reported CO<sub>2</sub> emissions.
- (i) In assessing whether the CO<sub>2</sub> emissions data reports contain a material misstatement, the verification team must determine whether the total reported CO<sub>2</sub> emissions contain a material misstatement using the following equation:

$$\text{Percent error} = \frac{\sum (\text{Discrepancies} + \text{Omissions} + \text{Misreporting})}{\text{Total CO}_2 \text{ emissions}}$$

Where:

“Discrepancies” means any differences between the reported CO<sub>2</sub> emissions, and the verifier’s calculated CO<sub>2</sub> emissions, that are subject to data checks in paragraph (6) of this subdivision.

“Omissions” means any CO<sub>2</sub> emissions the verifier concludes must be part of the CO<sub>2</sub> emissions data reports, but were not included by the JURISDICTION fuel supplier in the CO<sub>2</sub> emissions data reports.

“Misreporting” means duplicate, incomplete, or other CO<sub>2</sub> emissions the verifier concludes should, or should not, be part of the CO<sub>2</sub> emissions data reports.

“Total CO<sub>2</sub> emissions” means the total annual reported CO<sub>2</sub> emissions for which the verifier is conducting a material misstatement assessment.

- (ii) When evaluating material misstatement, verifiers must deem correctly substituted missing data to be accurate, regardless of the amount of missing data.
- (11) *Review of missing data substitution.* If any fuel shipment was affected by a loss of data used to calculate the JURISDICTION fuel supplier’s CO<sub>2</sub> emissions for the calendar year:
- (i) The verification team shall confirm that the JURISDICTION fuel supplier’s reported CO<sub>2</sub> emissions for the calendar year were calculated using the applicable missing data procedures in subdivision XX-8.1(c) or XX-8.2(c).
  - (ii) If 20 percent or less of any single data element used to calculate CO<sub>2</sub> emissions is missing, and CO<sub>2</sub> emissions are correctly calculated using the applicable missing data procedures in subdivision XX-8.1(c) or XX-8.2(c), the CO<sub>2</sub> emissions calculated using such missing data procedures will be considered accurate and as meeting the reporting requirements.
  - (iii) If greater than 20 percent of any single data element used to calculate CO<sub>2</sub> emissions is missing or any combination of data elements is missing that would result in more than 5 percent of a JURISDICTION fuel supplier’s CO<sub>2</sub> emissions being calculated

using the applicable missing data procedures in subdivision XX-8.1(c) or XX-8.2(c), the verifier must include a finding of nonconformance with the required CO<sub>2</sub> emissions calculation methodology as part of the verification statement.

- (iv) The verifier must note the date, time, and source of any missing data substitutions discovered during the course of verification in the verification report.

(c) Completion of verification services must include:

- (1) *Verification statement.* Upon completion of the verification services specified in paragraph (b) of this section, the verification body shall complete a verification statement in a format prescribed by the REGULATORY AGENCY and provide the statement to the JURISDICTION fuel supplier and the REGULATORY AGENCY or its agent by the applicable verification deadline specified in section XX-9.1. Before the verification statement is completed, the verification body shall have the verification services and findings of the verification team independently reviewed within the verification body by an independent reviewer who is a lead verifier not involved in services for that JURISDICTION fuel supplier during that calendar year.
- (2) *Independent review.* The lead verifier independent reviewer shall serve as a final check on the verification team's work to identify any significant concerns, including:
  - (i) Errors in planning,
  - (ii) Errors in data sampling, and
  - (iii) Errors in judgment by the verification team that are related to the draft verification statement.
  - (iv) The independent reviewer must maintain independence from the verification services by not making specific recommendations about how the verification services should be conducted. The independent reviewer will review documents applicable to the verification services provided, and identify any failure to comply

with requirements of this Part or with the verification body's internal policies and procedures for providing verification services. The independent reviewer must concur with the verification findings before the verification statement can be issued.

- (3) *Completion of findings and verification report.* The verification body is required to provide the following:
- (i) The verification body shall provide to the JURISDICTION fuel supplier a detailed verification report, which shall at a minimum include:
    - (a) A detailed description of the supplier's operations as they relate to this Part;
    - (b) A detailed description of data acquisition, tracking, and calculation systems;
    - (c) The verification plan in accordance with paragraph (b)(1) of this section;
    - (d) The detailed comparison of the data checks conducted during verification services in accordance with subparagraph (b)(6)(v) of this section;
    - (e) The log of issues identified in the course of verification activities and their resolution in accordance with paragraph (b)(9) of this section;
    - (f) The findings and any qualifying comments on findings during verification services in accordance with paragraph (b)(8) of this section; and
    - (g) The calculation performed in paragraph (b)(10) of this section.
    - (h) The verification report shall be submitted to the JURISDICTION fuel supplier at the same time as or before the final verification statement is submitted to the REGULATORY AGENCY or its agent. The detailed verification report shall be made available to the

REGULATORY AGENCY within seven days of such request being made.

- (ii) The verification team shall have a final discussion with the JURISDICTION fuel supplier explaining its findings, and notify the JURISDICTION fuel supplier of any unresolved issues noted in the issues log before the verification statement is finalized.
- (iii) The verification body shall provide the verification statement to the JURISDICTION fuel supplier and the REGULATORY AGENCY or its agent, attesting whether the verification body has found the submitted CO<sub>2</sub> emissions data reports to be free of material misstatements, and whether the CO<sub>2</sub> emissions data reports are in conformance with the requirements of this Part. For every qualified positive verification statement, the verification body shall explain the nonconformances contained within the CO<sub>2</sub> emissions data reports and shall cite the section(s) in this Part that correspond to the nonconformance and why the nonconformances do not result in a material misstatement. For every adverse verification statement, the verification body must explain all nonconformances and material misstatements leading to the adverse verification statement and shall cite the section(s) in this Part that correspond to the nonconformances and material misstatements.
- (iv) The lead verifier in the verification team shall attest that the verification team has carried out all verification services as required by this Subpart, and the lead verifier who has conducted the independent review of verification services and findings shall attest to his or her independent review on behalf of the verification body and his or her concurrence with the verification findings.
  - (a) The lead verifier must attest in the verification statement to the REGULATORY AGENCY as follows:

*“I certify under penalty of law that the verification team has carried out all verification services as required by Subpart XX-9. I am aware that there are significant civil or criminal penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”*

- (b) The lead verifier independent reviewer who has conducted the independent review of verification services and findings must attest in the verification statement to the REGULATORY AGENCY as follows:

*“I certify under penalty of law that I have conducted an independent review of the verification services and findings on behalf of the verification body as required by Subpart XX-9 and that the findings are true, accurate, and complete. I am aware that there are significant civil or criminal penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”*

- (4) **Adverse verification statement and petition process.** Prior to the verification body providing an adverse verification statement to the REGULATORY AGENCY or its agent, the verification body shall notify the JURISDICTION fuel supplier and the JURISDICTION fuel supplier shall be provided at least 14 days to modify the CO<sub>2</sub> emissions data report(s) to correct any material misstatements or nonconformance found by the verification team. The verification body must provide notice to the REGULATORY AGENCY or its agent of the potential for an adverse verification statement at the same time it notifies the JURISDICTION fuel supplier, and include a preliminary issues log. The modified report(s) and verification statement must be submitted to the REGULATORY AGENCY

or its agent by the verification deadline, even if the JURISDICTION fuel supplier makes a request to the REGULATORY AGENCY as provided below in subparagraph (i) of this paragraph.

- (i) If the JURISDICTION fuel supplier and the verification body cannot reach agreement on modifications to the CO<sub>2</sub> emissions data report(s) that result in a positive verification statement or qualified positive verification statement because of a disagreement on the requirements of this Part, the JURISDICTION fuel supplier may petition the REGULATORY AGENCY before the verification deadline and before the verification statement is submitted to make a final decision as to the verifiability of the submitted CO<sub>2</sub> emissions data report(s). At the same time that the JURISDICTION fuel supplier petitions the REGULATORY AGENCY, the JURISDICTION fuel supplier must submit all information it believes is necessary for the REGULATORY AGENCY to make a final decision.
  - (ii) The REGULATORY AGENCY shall make a final decision no later than June 15 following the submission of a petition pursuant to subparagraph (i) of this paragraph. If at any point the REGULATORY AGENCY requests information from the verification body or the JURISDICTION fuel supplier, the information must be submitted to the REGULATORY AGENCY within 10 days. The REGULATORY AGENCY will notify both the JURISDICTION fuel supplier and the verification body of its determination, which may also include an assigned CO<sub>2</sub> emissions level calculated pursuant to paragraph (5) of this subdivision, if applicable, and the basis for the determination.
- (5) *Assigned CO<sub>2</sub> emissions level.* When a JURISDICTION fuel supplier fails to receive a verification statement for a calendar year by the applicable deadline or receives an adverse verification statement, the REGULATORY AGENCY shall develop an assigned CO<sub>2</sub> emissions level



for the calendar year for the JURISDICTION fuel supplier. Within 10 days of a request by the REGULATORY AGENCY, the verification body (if applicable) shall provide any available verification services information or correspondence related to the CO<sub>2</sub> emissions data. Within 10 days of a request by the REGULATORY AGENCY, the JURISDICTION fuel supplier shall provide the data that is required to calculate CO<sub>2</sub> emissions according to the requirements of this Part, the preliminary or final detailed verification report prepared by the verification body (if applicable), and other information requested by the REGULATORY AGENCY. The JURISDICTION fuel supplier shall also make available personnel who can assist the REGULATORY AGENCY's determination of an assigned CO<sub>2</sub> emissions level for the calendar year.

- (i) In preparing the assigned CO<sub>2</sub> emissions level for the JURISDICTION fuel supplier, the REGULATORY AGENCY may consider the following information:
  - (a) The operations of the JURISDICTION fuel supplier for the calendar year;
  - (b) Any previous CO<sub>2</sub> emissions data reports submitted by the JURISDICTION fuel supplier and verification statements rendered for those reports;
  - (c) Information reported pursuant to Subpart XX-8;
  - (d) The CO<sub>2</sub> emissions calculation methodology in paragraph XX-8.2(c)(5);
  - (e) Conservative missing data parameters;
  - (f) Any submissions to other government agencies; or
  - (g) Any other information that the REGULATORY AGENCY deems relevant for estimating the quantity of CO<sub>2</sub> emissions.
- (ii) The REGULATORY AGENCY shall assign the CO<sub>2</sub> emissions level for the JURISDICTION fuel supplier using the best information available, including the information in subparagraph (i) of this

paragraph. The REGULATORY AGENCY will notify the JURISDICTION fuel supplier of its determination of an assigned CO<sub>2</sub> emissions level and the basis for the determination. The REGULATORY AGENCY shall include an assigned CO<sub>2</sub> emissions level in the decision made pursuant to subparagraph (4)(ii) of this subdivision, if applicable.

**[Each REGULATORY AGENCY will add language to its specific TCI-P regulation for a process for requests by regulated entities for review of the agency decision related to verification statements in accordance with the procedural pathways provided for review of similar agency decisions.]**

(d) Upon provision of the verification statement to the REGULATORY AGENCY or its agent, the CO<sub>2</sub> emissions data report shall be considered final. No changes shall be made to the report as submitted to the REGULATORY AGENCY or its agent, and all verification requirements of this Subpart shall be considered complete except in the circumstance specified in subdivision (e) of this section.

(e) If the REGULATORY AGENCY finds a high level of conflict of interest existed between a verification body and a JURISDICTION fuel supplier, an error is identified, or a CO<sub>2</sub> emissions data report in a calendar year that is covered by a positive or qualified positive verification statement fails a REGULATORY AGENCY audit, the REGULATORY AGENCY may set aside the positive or qualified positive verification statement issued by the verification body, and require the JURISDICTION fuel supplier to have the CO<sub>2</sub> emissions data reports for that calendar year reverified by a different verification body within 45 days. In instances where an error to a CO<sub>2</sub> emissions data report is identified and determined by the REGULATORY AGENCY to not affect the CO<sub>2</sub> emissions data, the change may be made without a set aside of the positive or qualified positive verification statement.

(f) Upon request by the REGULATORY AGENCY, the JURISDICTION fuel supplier shall provide the data used to generate a CO<sub>2</sub> emissions data report, including all data available to a verifier in the conduct of verification services, within 14 days.

(g) Upon request by the REGULATORY AGENCY, the verification body shall provide the REGULATORY AGENCY the full verification report given to the JURISDICTION fuel supplier, as well as the sampling plan, contracts for verification services, and any other supporting documents and calculations, within 14 days.

(h) Upon request by the REGULATORY AGENCY, the verification body shall make itself and its personnel available for a REGULATORY AGENCY audit.

**XX-9.3 Accreditation requirements for verification bodies, lead verifiers, and verifiers of CO<sub>2</sub> emissions data reports.**

(a) The accreditation requirements specified in this section shall apply to all verification bodies, lead verifiers, and verifiers that wish to provide verification services under this Subpart.

(b) The REGULATORY AGENCY may issue accreditation to verification bodies, lead verifiers, and verifiers that meet the requirements specified in this section.

(1) *Verification body accreditation application.* To apply for accreditation as a verification body, the applicant shall submit the following information to the REGULATORY AGENCY:

(i) A list of all verification staff and a description of their duties and qualifications, including REGULATORY AGENCY accredited verifiers on staff. The applicant shall demonstrate staff qualifications by listing each individual's education, experience, professional licenses, and other pertinent information.

(a) A verification body shall employ and retain at least two verifiers that have been accredited as lead verifiers, as specified in paragraph (2) of this subdivision.

(b) A verification body shall employ and retain at least five total full-time staff.

(ii) The applicant shall provide a list of any judicial proceedings, enforcement actions, or administrative actions filed against the

body within the previous five years, with an explanation as to the nature of the proceedings.

- (iii) The applicant shall provide documentation that the proposed verification body maintains a minimum of one million U.S. dollars of professional liability insurance and must maintain this insurance for three years after completing verification services. Neither general nor umbrella liability policies can be used for the professional liability insurance minimum for the purposes of this subparagraph.
- (iv) The applicant shall provide a demonstration that the body has policies and mechanisms in place to prevent conflicts of interest and to identify and resolve potential conflict of interest situations if they arise. The applicant shall provide the following information:
  - (a) Identification of services provided by the verification body, the industries that the body serves, and the locations where those services are provided;
  - (b) A detailed organizational chart that includes the verification body, its management structure, and any related entities; and
  - (c) The verification body's internal conflict of interest policy that identifies activities and limits to monetary or non-monetary gifts that apply to all employees and procedures to monitor, assess, and notify the REGULATORY AGENCY of potential conflicts of interest.
- (v) The applicant shall provide a demonstration that the body has procedures or policies to support staff technical training as it relates to verification, including participation on an ongoing basis in any verifier training that may be required by the REGULATORY AGENCY.
- (vi) The verification body shall notify the REGULATORY AGENCY within 30 days of when it no longer meets the requirements for

accreditation as a verification body in this section. The verification body may request that the REGULATORY AGENCY provide additional time to hire additional staff to meet the requirements of this section.

- (2) *Lead verifier accreditation application.* To apply for accreditation as a lead verifier, the applicant shall submit documentation to the REGULATORY AGENCY that provides the evidence specified in subparagraph (i) of this paragraph and subparagraph (ii) or (iii) of this paragraph:
  - (i) Evidence that the applicant meets the criteria in paragraph (3) of this subdivision; and,
  - (ii) Evidence that the applicant has been a REGULATORY AGENCY accredited verifier for two continuous years and has worked as a verifier in at least three completed verifications under the supervision of a REGULATORY AGENCY accredited lead verifier, with evidence of favorable assessment by the REGULATORY AGENCY of services performed; or,
  - (iii) Evidence that the applicant has worked as a project manager or lead person for not less than four years, of which two may be graduate level work:
    - (a) In the development of CO<sub>2</sub> or other air emissions inventories; or,
    - (b) As a lead environmental data or financial auditor.
- (3) *Verifier accreditation application.* To apply for accreditation as a verifier, the applicant shall submit the following documentation to the REGULATORY AGENCY:
  - (i) Evidence demonstrating the minimum education background required to act as a verifier for the REGULATORY AGENCY. Minimum education background means that the applicant has either:

- (a) A bachelors level college degree or equivalent in science, technology, business, statistics, mathematics, environmental policy, economics, or financial auditing; or
  - (b) Evidence demonstrating the completion of significant and relevant work experience or other personal development activities that have provided the applicant with the communication, technical, and analytical skills necessary to conduct verification.
- (ii) Evidence demonstrating sufficient workplace experience to act as a verifier, including evidence that the applicant has a minimum of two years of full-time work experience in a professional role involved in emissions data management, emissions technology, emissions inventories, environmental auditing, or other technical skills necessary to conduct verification.
- (4) After meeting the prescreening requirement in paragraph (c)(2) of this section, any applicant under this section must take a REGULATORY AGENCY approved general verification training and receive a passing score of greater than an unweighted 70 percent on an exit examination. If the applicant does not pass the exam after the training, the applicant may retake the exam a second time. Only one retake of the examination is allowed before the applicant is required to retake the REGULATORY AGENCY approved general verification training course.
- (5) *Fuels specific verifiers.* The applicant seeking to be accredited as a fuels specific verifier as specified in paragraph XX-9.2(a)(2) must, in addition to meeting the requirements for accredited lead verifier or verifier qualification, have at least two years of professional experience related to fuel shipments and, after meeting the prescreening requirement in paragraph (c)(2) of this section, take a REGULATORY AGENCY approved fuels specific verification training and receive a passing score of greater than an unweighted 70 percent on an exit examination. If the applicant does not pass the exam after the training, the applicant may

retake the exam a second time. Only one retake of the examination is allowed before the applicant is required to retake the REGULATORY AGENCY approved fuels specific verification training course.

- (6) Nothing in this section shall be construed as preventing the REGULATORY AGENCY from requesting additional information or documentation from an applicant after receipt of the application for accreditation as a verification body, lead verifier, verifier, or fuels specific verifier from seeking additional information from other persons or entities regarding the applicant's fitness for qualification.

(c) *REGULATORY AGENCY accreditation.*

- (1) Within 90 days of receiving an application, in a format prescribed by the REGULATORY AGENCY, for accreditation as a verification body, lead verifier, verifier, or fuels specific verifier, the REGULATORY AGENCY shall inform the applicant either that the application is complete or that additional specific information is required to make the application complete.
- (2) Upon a finding by the REGULATORY AGENCY that an application for accreditation as a verification body, lead verifier, verifier, or fuels specific verifier is complete, meets all applicable regulatory requirements, and passes a performance review by the REGULATORY AGENCY, the prescreening requirement is met and the applicant will be eligible to attend the verification training required by this section. The performance review may include a review of applicable past sampling plans, verification reports, verification statements, conflict of interest submittals, and additional information or documentation regarding the applicant's fitness for qualification.
- (3) Within 45 days following completion of the application process and all applicable training and examination requirements, the REGULATORY AGENCY shall act to withhold or approve accreditation for the verification body, lead verifier, verifier, or fuels specific verifier. Accreditation is valid for a period of three years, whereupon the applicant may re-apply for

accreditation as a verification body, lead verifier, verifier, or fuels specific verifier if the applicant has not been subject to an enforcement action under this Part. All REGULATORY AGENCY approved verification training and examination requirements applicable at the time of re-application must be met for accreditation to be renewed by the REGULATORY AGENCY. In addition, the performance review requirement set forth in paragraph (2) of this subdivision must be met for accreditation to be renewed by the REGULATORY AGENCY. All verification body requirements in paragraph (b)(1) of this section must be met for the REGULATORY AGENCY to renew the verification body accreditation.

- (4) Notwithstanding paragraphs (2), (3), and (4) of this subdivision, the REGULATORY AGENCY may approve accreditation of an applicant verification body, lead verifier, verifier, or fuels specific verifier for any period for which the applicant is accredited by another jurisdiction, whether or not it is a participating jurisdiction, or any nationally or internationally recognized accreditation organization.
- (5) Within 20 days of being notified of any nonconformance in another voluntary or mandatory greenhouse gas program, a REGULATORY AGENCY accredited verification body, lead verifier, verifier, or fuels specific verifier shall provide notice to the REGULATORY AGENCY of the corrective action. That notice shall include reasons for the corrective action and the type of corrective action. The verification body, lead verifier, verifier, or fuels specific verifier must provide additional information to the REGULATORY AGENCY upon request.
- (6) The verification body, lead verifier, verifier, or fuels specific verifier whose accreditation is approved under this subdivision shall keep in its possession, custody, or control all accreditation applications, notices, or other information submitted under this Part, and all material received, reviewed, or generated to provide such an application, notice, or information, for 10 years from submission of the application, notice, or



information. Any recordkeeping period may be extended, at any time prior to the end of the period, by the REGULATORY AGENCY.

(d) *Modification, suspension, or revocation of an approval of a verification body, lead verifier, fuels specific verifier, or verifier, and voluntary withdrawal from the accreditation program.* The REGULATORY AGENCY may review and, for good cause, including any violation of this Subpart or any similar action in an analogous greenhouse gas program, modify, suspend, or revoke an approval of accreditation to a verification body, lead verifier, fuels specific verifier, or verifier. The REGULATORY AGENCY shall not revoke, modify, or suspend an accreditation approval without affording the verification body, lead verifier, fuels specific verifier, or verifier the opportunity for a hearing in accordance with [insert reference to JURISDICTION hearing procedures].

- (1) During suspension or revocation proceedings, the verification body, lead verifier, fuels specific verifier, or verifier may not continue to provide verification services.
- (2) Within 10 days of suspension or revocation of accreditation, a verification body must notify all JURISDICTION fuel suppliers for which it is providing verification services, or has provided verification services within the past six months, of its suspension or revocation of accreditation.
- (3) A JURISDICTION fuel supplier that has been notified by a verification body of a suspended or revoked accreditation must contract with a different verification body for verification services.
- (4) An accredited verification body or individual verifier may request to voluntarily withdraw its accreditation by providing a notice to the REGULATORY AGENCY requesting such withdrawal.

(e) *Subcontracting.* The following requirements shall apply to any verification body that elects to subcontract a portion of verification services.

- (1) All subcontractors must be accredited by the REGULATORY AGENCY to perform the verification services for which the subcontractor has been engaged by the verification body.
- (2) The verification body must assume full responsibility for verification services performed by subcontractor verifiers.

- (3) A verification body shall not use subcontractors to meet the minimum staff total or lead verifier requirements as specified in clauses (b)(1)(i)(a) and (b)(1)(i)(b) of this section.
- (4) A verifier acting as a subcontractor to another verification body shall not further subcontract or outsource verification services for a JURISDICTION fuel supplier.
- (5) A verification body that engages a subcontractor shall be responsible for demonstrating an acceptable level of conflict of interest, as provided in section XX-9.4, between its subcontractor and the JURISDICTION fuel supplier for which it will provide verification services.
- (6) A verification body may not use a subcontractor as the lead verifier independent reviewer.

#### **XX-9.4 Conflict of interest requirements for verification bodies.**

- (a) The conflict of interest provisions of this section shall apply to verification bodies, lead verifiers, fuels specific verifiers, and verifiers accredited by the REGULATORY AGENCY to perform verification services for JURISDICTION fuel suppliers. Any entity that is hired by a JURISDICTION fuel supplier to contract with a verification body on behalf of the JURISDICTION fuel supplier is subject to the conflict of interest assessment in this section. In such instances, the verification body must assess the potential conflict of interest between itself and the contracting entity as well as between itself and the JURISDICTION fuel supplier, and must also address the potential conflict of interest between the contracting entity and the JURISDICTION fuel supplier, including an assessment provided and signed by the contracting entity.
- (b) The potential for a conflict of interest must be deemed to be high where:
  - (1) The verification body and JURISDICTION fuel supplier share any management staff or board of directors membership, or any of the senior management staff of the JURISDICTION fuel supplier have been employed by the verification body, or vice versa, within the previous five years; or

- (2) Any employee of the verification body, or any employee of a related entity, or a subcontractor who is a member of the verification team has provided to the JURISDICTION fuel supplier any of the following services within the previous five years:
- (i) Designing, developing, implementing, reviewing, or maintaining an inventory or information or data management system for greenhouse gas emissions or fuel shipments, unless the review was part of providing verification services;
  - (ii) Designing energy efficiency, renewable power, or other projects that explicitly identify greenhouse gas reductions as a benefit;
  - (iii) Designing, developing, implementing, conducting an internal audit of, consulting concerning, or maintaining an offset project;
  - (iv) Owning, buying, selling, trading, or retiring shares, stocks, or emissions reduction credits from an offset project that was developed by or whose resulting reduction credits are owned by the JURISDICTION fuel supplier;
  - (v) Dealing in or being a promoter of credits on behalf of an offset project sponsor where the credits are owned by or the offset project was developed by the JURISDICTION fuel supplier;
  - (vi) Preparing or producing greenhouse-gas-related manuals, handbooks, or procedures specifically for the JURISDICTION fuel supplier;
  - (vii) Appraisal services of carbon or greenhouse gas liabilities or assets;
  - (viii) Brokering in, advising on, or assisting in any way in carbon or greenhouse-gas-related markets;
  - (ix) Directly managing any health, environment or safety functions for the JURISDICTION fuel supplier;
  - (x) Bookkeeping or other services related to accounting records or financial statements;
  - (xi) Any service related to development of information systems,

- including consulting on the development of environmental management systems;
- (xii) Appraisal and valuation services, both tangible and intangible;
  - (xiii) Fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services will not be part of the verification process;
  - (xiv) Any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;
  - (xv) Any internal audit service that has been outsourced by the JURISDICTION fuel supplier that relates to the JURISDICTION fuel supplier's internal accounting controls, financial systems, or financial statements, unless the result of those services will not be part of the verification process;
  - (xvi) Acting as a broker-dealer (registered or unregistered), promoter or underwriter on behalf of the JURISDICTION fuel supplier;
  - (xvii) Any legal services;
  - (xviii) Expert services to the JURISDICTION fuel supplier, a trade or membership group to which the JURISDICTION fuel supplier belongs, or a legal representative for the purpose of advocating the JURISDICTION fuel supplier's interests in litigation or in a regulatory or administrative proceeding or investigation; or
  - (xix) Verification services that are not conducted in accordance with, or equivalent to, the requirements of this section, unless the systems and data reviewed during those services, as well as the result of those services, will not be part of the verification process.
- (3) The potential for conflict of interest shall be deemed to be high when any staff of the verification body provides any type of non-monetary incentive to a JURISDICTION fuel supplier, or a JURISDICTION fuel

supplier provides any non-monetary incentive to any verification body staff, to secure a verification services contract.

- (4) The potential for a conflict of interest shall be deemed to be high where any staff of the verification body has provided verification services for the JURISDICTION fuel supplier except within the time periods in which the JURISDICTION fuel supplier is allowed to use the same verification body as specified in subdivision XX-9.1(b).

(c) The potential for a conflict of interest shall be deemed to be low where the following conditions are met:

- (1) No potential for a high conflict of interest is found pursuant to subdivision (b) of this section; and
- (2) Any services provided by any member of the verification body or verification team to the JURISDICTION fuel supplier, within the last five years, are valued at less than 20 percent of the fee for the proposed verification services. Any verification conducted in accordance with, or equivalent to, this section provided by the verification body or verification team outside the jurisdiction of the REGULATORY AGENCY is excluded from this financial assessment but must be disclosed to the REGULATORY AGENCY in accordance with subdivision (e) of this section.

(d) The potential for a conflict of interest shall be deemed to be medium where the potential for a conflict of interest is not deemed to be either high or low as specified in subdivisions (b) and (c) of this section. The potential for conflict of interest will also be deemed to be medium where there are any instances of personal or familial relationships between the members of the verification body and management or staff of the JURISDICTION fuel supplier.

- (1) If a verification body identifies a medium potential for conflict of interest and intends to provide verification services for the JURISDICTION fuel supplier, the verification body shall submit, in addition to the submittal requirements specified in subdivision (e) of this section, a plan to avoid,

neutralize, or mitigate the potential conflict of interest situation. At a minimum, the conflict of interest mitigation plan shall include:

- (i) A demonstration that any natural persons with potential conflicts have been removed and insulated from the project.
  - (ii) An explanation of any changes to the organizational structure or verification body to remove the potential conflict of interest. A demonstration that any unit with potential conflicts has been divested or moved into an independent entity or any subcontractor with potential conflicts has been removed.
  - (iii) Any other circumstance that specifically addresses other sources for potential conflict of interest.
- (2) As provided in paragraph (f)(4) of this section, the REGULATORY AGENCY shall evaluate the conflict of interest mitigation plan and determine whether verification services may proceed.

(e) *Conflict of interest submittal requirements for accredited verification bodies.*

Before the start of any work related to providing verification services to a JURISDICTION fuel supplier, a verification body must first be authorized by the REGULATORY AGENCY to provide verification services. To obtain authorization the verification body shall submit to the REGULATORY AGENCY a self-evaluation of the potential for any conflict of interest that the verification body, related entities, or any subcontractors performing verification services may have with the JURISDICTION fuel supplier for which it will perform verification services. The submittal shall include the following **in a format prescribed by the REGULATORY AGENCY**:

- (1) Identification of whether the potential for conflict of interest is high, low, or medium based on factors specified in subdivisions (b), (c), and (d) of this section;
- (2) Identification of whether the verification body, related entities, or any member of the verification team has previously provided verification services for the JURISDICTION fuel supplier or related entities and, if so, provide a description of such services and the years in which such services were provided;

- (3) Identification of whether any member of the verification team, verification body, or related entities has engaged in services of any nature, other than verification services, with the JURISDICTION fuel supplier or related entities either within or outside JURISDICTION during the previous five years. If services other than verification services have previously been provided, the following information shall also be submitted:
- (i) Identification of the nature and location of the work performed for the JURISDICTION fuel supplier or related entity and whether the work is similar to the type of work to be performed during verification, such as emissions inventory, auditing, or other work with implications for the JURISDICTION fuel supplier's CO<sub>2</sub> emissions pursuant to this Part;
  - (ii) The nature of past, present, or future relationships of any member of the verification team, verification body, or related entities with the JURISDICTION fuel supplier or related entities including:
    - (a) Instances when any member of the verification team, verification body, or related entities has performed or intends to perform work for the JURISDICTION fuel supplier or related entities;
    - (b) Identification of whether work is currently being performed for the JURISDICTION fuel supplier or related entities, and if so, the nature of the work;
    - (c) How much work was performed for the JURISDICTION fuel supplier or related entities in the last five years, in U.S. dollars;
    - (d) Whether any member of the verification team, verification body, or related entities has contracts or other arrangements to perform work for the JURISDICTION fuel supplier or a related entity; and

- (e) How much work related to greenhouse gases the verification team has performed for the JURISDICTION fuel supplier or related entities in the last five years, in U.S. dollars.
  - (iii) Explanation of how the amount and nature of work previously performed is such that any member of the verification team's credibility and lack of bias should not be under question.
- (4) A list of names of the staff that would perform verification services for the JURISDICTION fuel supplier, and a description of any instances of personal or family relationships with management or employees of the JURISDICTION fuel supplier that potentially represent a conflict of interest; and
- (5) Identification of any other circumstances known to the verification body, or JURISDICTION fuel supplier that could result in a conflict of interest.
- (6) Attest to the REGULATORY AGENCY as follows:

*"I certify under penalty of law that the information provided in this conflict of interest submittal is true, accurate, and complete. I am aware that there are significant civil or criminal penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."*

(f) *Conflict of interest determinations.* The REGULATORY AGENCY must review the self-evaluation submitted by the verification body and determine whether the verification body is authorized to perform verification services for the JURISDICTION fuel supplier.

- (1) The REGULATORY AGENCY shall notify the verification body when the conflict of interest evaluation information submitted under subdivision (e) of this section is deemed complete. Within 20 days of deeming the information complete, the REGULATORY AGENCY shall determine whether the verification body is authorized to proceed with verification and must so notify the verification body.
- (2) If the REGULATORY AGENCY determines the verification body or any member of the verification team meets the criteria specified in subdivision (b) of this section, the REGULATORY AGENCY shall find a high potential conflict of interest and verification services may not proceed.



- (3) If the REGULATORY AGENCY determines that there is a low potential conflict of interest, verification services may proceed.
  - (4) If the REGULATORY AGENCY determines that the verification body and verification team have a medium potential for a conflict of interest, the REGULATORY AGENCY shall evaluate the conflict of interest mitigation plan submitted pursuant to subdivision (d) of this section, and may request additional information from the applicant to complete the determination. In determining whether verification services may proceed, the REGULATORY AGENCY may consider factors including, but not limited to, the nature of previous work performed, the current and past relationships between the verification body, related entities, and its subcontractors with the JURISDICTION fuel supplier and related entities, and the cost of the verification services to be performed. If the REGULATORY AGENCY determines that these factors when considered in combination demonstrate an acceptable level of potential conflict of interest, the REGULATORY AGENCY will authorize the verification body to provide verification services.
- (g) *Monitoring conflict of interest situations.*
- (1) After commencement of verification services, the verification body shall monitor and immediately make full disclosure to the REGULATORY AGENCY regarding any potential for a conflict of interest situation that arises. This disclosure shall include a description of actions that the verification body has taken or proposes to take to avoid, neutralize, or mitigate the potential for a conflict of interest.
  - (2) The verification body shall continue to monitor arrangements or relationships that may be present for a period of one year after the completion of verification services. During that period, within 30 days of the verification body or any verification team member entering into any contract with the JURISDICTION fuel supplier or related entity for which the body has provided verification services, the verification body shall provide notice to the REGULATORY AGENCY of the contract and the

nature of the work to be performed, and revenue received.

The REGULATORY AGENCY within 30 days, will determine the level of conflict using the criteria in subdivisions (a) through (d) of this section, if the JURISDICTION fuel supplier must reverify its CO<sub>2</sub> emissions data reports, and if accreditation revocation is warranted.

- (3) The verification body shall provide notice to the REGULATORY AGENCY, within 30 days, of any emerging conflicts of interest during the time verification services are being provided.
  - (i) If the REGULATORY AGENCY determines that a disclosed emerging potential conflict is medium risk and this risk can be mitigated, or low risk, the verification body is deemed to have met the conflict of interest requirements to continue to provide verification services to the JURISDICTION fuel supplier and will not be subject to suspension or revocation of accreditation as specified in subdivision XX-9.3(d).
  - (ii) If the REGULATORY AGENCY determines that a disclosed emerging potential conflict is medium risk and cannot be mitigated, or high risk, the verification body will not be able to continue to provide verification services to the JURISDICTION fuel supplier, and may be subject to suspension or revocation of accreditation under subdivision XX-9.3(d).
- (4) The verification body shall report to the REGULATORY AGENCY any changes in its organizational structure, including mergers, acquisitions, or divestitures, for one year after completion of verification services.
- (5) The REGULATORY AGENCY may invalidate a verification finding if a potential conflict of interest has arisen for any member of the verification team. In such a case, the JURISDICTION fuel supplier shall be provided 45 days to complete reverification.
- (6) If the verification body or its subcontractor(s) are found to have violated the conflict of interest requirements of this section,

the REGULATORY AGENCY may rescind accreditation of the body, its verifier staff, or its subcontractor(s) as provided in subdivision XX-9.3(d).

(h) The verification body shall keep in its possession, custody, or control all conflict of interest submittals, conflict of interest mitigation plans, disclosures, notices, reports, or other information submitted under this Part, and all material received, reviewed, or generated to provide such submittal, plan, disclosure, notice, report, or information, for 10 years from submission of the submittal, plan, disclosure, notice, report, or information. Any recordkeeping period may be extended, at any time prior to the end of the period, by the REGULATORY AGENCY.

## **Subpart XX-10      Offsets**

### **XX-10.1      Purpose.**

The REGULATORY AGENCY will provide for the award of CO<sub>2</sub> offset allowances to sponsors of CO<sub>2</sub> emissions offset projects that have reduced or avoided atmospheric loading of CO<sub>2</sub> equivalent or sequestered carbon as demonstrated in accordance with the applicable provisions of this Subpart. The requirements of this Subpart seek to ensure that CO<sub>2</sub> offset allowances awarded represent CO<sub>2</sub> equivalent emission reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent within the framework of a standards-based approach. Subject to the relevant compliance deduction limitations of paragraph XX-6.5(a)(3), CO<sub>2</sub> offset allowances may be used by any JURISDICTION fuel supplier for compliance purposes.

### **XX-10.2      Definitions.**

The definitions in this section apply only to this Subpart.

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

- (b) *Anaerobic digestion*. The decomposition of organic material including manure brought about through the action of microorganisms in the absence of elemental oxygen.
- (c) *Anaerobic storage*. Storage of organic material in an oxygen-free environment, or under oxygen-free conditions, including but not limited to, holding tanks, ponds, and lagoons.
- (d) *ANSI*. American National Standards Institute.
- (e) *Attribute*. A characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, jurisdiction program eligibility, or other characteristic that can be identified, accounted for, and tracked.
- (f) *Attribute credit*. An attribute credit represents the attributes related to one megawatt hour of electricity generation.
- (g) *Biogas*. Gas resulting from the decomposition of organic matter under anaerobic conditions. The principal constituents are methane and carbon dioxide.
- (h) *CO<sub>2</sub>e*. Carbon dioxide equivalent, or the quantity of a given greenhouse gas multiplied by its global warming potential (GWP).
- (i) *CO<sub>2</sub> emissions offset project or Offset project*. All equipment, materials, items, or actions directly related to the reduction of CO<sub>2</sub> equivalent emissions or the sequestration of carbon specified in a consistency application submitted pursuant to section XX-10.4. Equipment, materials, items, or actions unrelated to an offset project reduction of CO<sub>2</sub> equivalent emissions or the sequestration of carbon, but occurring at a location where an offset project occurs, shall not be considered part of an offset project, unless specified at section XX-10.5.

(j) *Conflict of interest.* A situation that may arise with respect to an entity in relation to any specific project sponsor, CO<sub>2</sub> emissions offset project, or category of offset projects, such that the entity's other activities or relationships with other entities render or may render the entity incapable of providing an impartial certification opinion, or otherwise compromise the entity's objectivity in performing certification functions.

(k) *Cooperating regulatory agency.* A regulatory agency in a United States jurisdiction that is not a participating jurisdiction and that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating jurisdictions to carry out certain obligations relative to CO<sub>2</sub> emissions offset projects in that United States jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of this Subpart.

(l) *Forest offset project.* An offset project involving reforestation, improved forest management, or avoided conversion.

(m) *Forest offset project data report.* The report prepared by a project sponsor of a forest offset project each year that provides the information and documentation required by this Subpart or the forest offset protocol.

(n) *Forest offset protocol.* The protocol titled "Regional Greenhouse Gas Initiative Offset Protocol U.S. Forest Projects", published by the jurisdictions participating in the Regional Greenhouse Gas Initiative on June 12, 2013.

(o) *Global Warming Potential (GWP).* A measure of the radiative efficiency (heat-absorbing ability) of a particular gas relative to that of CO<sub>2</sub> after taking into account the decay rate of each gas (the amount removed from the atmosphere over a given number of years) relative to that of CO<sub>2</sub>. Global warming potentials used in this Subpart are consistent with the values used in the Intergovernmental Panel on Climate Change, Fifth Assessment Report.

- (p) *Independent verifier or Verifier.* An entity that has been approved by the REGULATORY AGENCY to conduct verification services under the Subpart.
- (q) *Intentional reversal.* Any reversal caused by a forest owner's negligence, gross negligence, or willful intent, including harvesting, development, and harm to the area within the forest offset project boundary.
- (r) *Market penetration rate.* A measure of the diffusion of a technology, product, or practice in a defined market, as represented by the percentage of annual sales for a product or practice, or as a percentage of the existing installed stock for a product or category of products, or as the percentage of existing installed stock that utilizes a practice. The REGULATORY AGENCY may determine an appropriate market definition and market penetration metric for a category of technology, product, or practice, and may issue guidance specifying the technologies, products, or practices that meet a specified market penetration rate.
- (s) *Project commencement.* For an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials, the date of the beginning of such activity. For an offset project that involves the implementation of a management activity or protocol, the date on which such activity is first implemented, or such protocol first utilized. For an offset project involving reforestation, improved forest management, or avoided conversion, the date specified in section 3.2 of the forest offset protocol.
- (t) *Regional-type anaerobic digester.* An anaerobic digester using feedstock from more than one agricultural operation, or importing feedstock from more than one agricultural operation and commonly referred to as a “community digester” or “centralized digester.”
- (u) *Renewable portfolio standard.* A statutory or regulatory requirement that a load-serving entity provide a certain portion of the electricity it supplies to its customers from renewable energy sources, or any other statutory or regulatory requirement that a

certain portion of electricity supplied to the electricity grid be generated from renewable energy sources.

(v) *Reporting period.* The period of time covered by a forest offset project data report. The first reporting period for an offset project in an initial crediting period may consist of 6 to 24 consecutive months; all subsequent reporting periods in an initial crediting and all reporting periods in any renewed crediting period must consist of 12 consecutive months.

(w) *Reversal.* A greenhouse gas emission reduction or greenhouse gas removal enhancement for which CO<sub>2</sub> offset allowances have been issued that is subsequently released or emitted back into the atmosphere due to any intentional or unintentional circumstance.

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

(y) *Total solids.* The total of all solids in a sample. They include the total suspended solids, total dissolved solids, and volatile suspended solids.

(z) *Unintentional Reversal.* Any reversal, including, but not limited to, wildfires, insects, or disease that is not the result of the forest owner's negligence, gross negligence, or willful intent.

(aa) *Verification services.* The activities conducted by an independent verifier to verify that certain parts of a CO<sub>2</sub> emissions offset project consistency application and/or monitoring and verification report conforms to the requirements of this Subpart.

(bb) *Volatile solids.* The fraction of total solids that is comprised primarily of organic matter as defined in U.S.EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020).

### **XX-10.3 General requirements.**

(a) *Eligible CO<sub>2</sub> emissions offset projects.* To qualify for the award of CO<sub>2</sub> offset allowances, offset projects shall satisfy all the applicable requirements of this Subpart.

(1) *Offset project types.* The following types of offset projects are eligible for the award of CO<sub>2</sub> offset allowances.

- (i) Landfill methane capture and destruction;
- (ii) Sequestration of carbon due to reforestation, improved forest management, or avoided conversion;
- (iii) Avoided methane emissions from agricultural manure management operations.

(2) *Offset project locations.*

- (i) To qualify for the award of CO<sub>2</sub> allowances under this Subpart, eligible offset projects may be located in any of the following locations:
  - (a) In JURISDICTION; and
  - (b) In any United States jurisdiction in which a cooperating regulatory agency has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating jurisdictions to carry out certain obligations relative to CO<sub>2</sub> emissions offset projects in that U.S. jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of this Subpart.
- (ii) Projects located (in whole or in part) in one or more participating jurisdiction are not eligible for CO<sub>2</sub> offset allowances under this Subpart unless more of the CO<sub>2</sub> equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in JURISDICTION than in any other participating jurisdiction.

(b) *Project sponsor.* Any entity may act as the sponsor of an eligible CO<sub>2</sub> emissions offset project, provided that entity meets the requirements at section XX-10.4.



(c) *General additionality requirements.* Except as provided with respect to specific offset project standards in section XX-10.5, the following general requirements shall apply.

- (1) CO<sub>2</sub> offset allowances shall not be awarded to an offset project that is required pursuant to any local, jurisdiction, or federal law, regulation, or administrative or judicial order. If an offset project receives a consistency application approval under section XX-10.4 and is later required by local, jurisdiction, or federal law, regulation, or administrative or judicial order, then the offset project shall remain eligible for the award of CO<sub>2</sub> offset allowances until the end of its current allocation period, but its eligibility shall not be extended for an additional allocation period.
- (2) CO<sub>2</sub> offset allowances shall not be awarded to an offset project that includes an electric generation component, unless the project sponsor transfers legal rights to any and all attribute credits (other than the CO<sub>2</sub> offset allowances awarded under section XX-10.7) generated from the operation of the offset project that may be used for compliance with a renewable portfolio standard or other regulatory requirement, to the REGULATORY AGENCY or its agent.
- (3) CO<sub>2</sub> offset allowances shall not be awarded to an offset project that receives funding or other incentives from any system benefit fund, or funds or other incentives provided through an allocation under section XX-5.3.
- (4) CO<sub>2</sub> offset allowances shall not be awarded to an offset project that is awarded credits or allowances under any other mandatory or voluntary greenhouse gas program, except as provided in paragraph XX-10.5(b)(8).

(d) *Maximum allocation periods for CO<sub>2</sub> emissions offset projects.*

- (1) *Maximum allocation periods.* Except as provided in paragraph (2) of this subdivision, the REGULATORY AGENCY may award CO<sub>2</sub> offset allowances under section XX-10.7 for an initial 10-year allocation period. At the end of the initial 10-year allocation period, the REGULATORY

AGENCY may award CO<sub>2</sub> offset allowances for a second 10-year allocation period, provided the project sponsor has submitted a consistency application pursuant to section XX-10.4 prior to the expiration of the initial allocation period, and the REGULATORY AGENCY has issued an approval pursuant to paragraph XX-10.4(e)(2).

- (2) *Maximum allocation periods for offset projects involving reforestation, improved forest management, or avoided conversion.* The REGULATORY AGENCY may award CO<sub>2</sub> offset allowances under section XX-10.7 for any project involving reforestation, improved forest management, or avoided conversion offset project for an initial 25-year allocation period. At the end of the initial 25-year allocation period, or any subsequent allocation period, the REGULATORY AGENCY may award CO<sub>2</sub> offset allowances for a subsequent 25-year allocation period, provided the project sponsor has submitted a consistency application for the offset project pursuant to section XX-10.4 prior to the expiration of the initial allocation period, and the REGULATORY AGENCY has issued an approval pursuant to paragraph XX-10.4(e)(2).

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

(f) *Ineligibility due to noncompliance.*

- (1) If at any time the REGULATORY AGENCY determines that a project sponsor has not complied with the requirements of this Subpart, then the REGULATORY AGENCY may revoke and retire any and all CO<sub>2</sub> offset allowances in the project sponsor's account.
- (2) If at any time the REGULATORY AGENCY determines that an offset project does not comply with the requirements of this Subpart, then the

REGULATORY AGENCY may revoke any approvals it has issued relative to the offset project.

#### **XX-10.4 Application process.**

(a) *Establishment of general account.* The sponsor of an offset project must establish a general account under subdivision XX-6.2(b). All submissions to the REGULATORY AGENCY required for the award of CO<sub>2</sub> offset allowances under this Subpart must be by the CO<sub>2</sub> authorized account representative for the general account of the project sponsor of the relevant offset project.

(b) *Consistency application deadlines.*

- (1) For offset projects not involving reforestation, improved forest management, or avoided conversion the consistency application must be submitted by the date that is 6 months after the offset project is commenced.
- (2) For offset projects involving reforestation, improved forest management, or avoided conversion the consistency application must be submitted by the date that is one year after the offset project is commenced, except for as described in paragraph XX-10.5(b)(8).
- (3) Any consistency application that fails to meet the deadlines of this subdivision will result in the disapproval of the consistency application and the continued ineligibility of the subject offset project.

(c) *Consistency application contents.*

- (1) For an offset project, the consistency application must include the following information and the certification statement as required in subparagraph XX-6.2(b)(2)(ii).
  - (i) The project sponsor's name, address, e-mail address, telephone number, and account number.
  - (ii) The offset project description as required by the relevant provisions of section XX-10.5.

- (iii) A demonstration that the offset project meets all applicable requirements set forth in this Subpart.
- (iv) The emissions baseline determination as required by the relevant provisions of section XX-10.5.
- (v) An explanation of how the projected reduction or avoidance of atmospheric loading of CO<sub>2</sub> equivalent or the sequestration of carbon is to be quantified, monitored, and verified as required by the relevant provisions of section XX-10.5.
- (vi) A completed consistency application agreement, signed by the project sponsor, that reads as follows:

*“The undersigned project sponsor recognizes and accepts that the application for, and the receipt of, CO<sub>2</sub> offset allowances under the TCI-P is predicated on the project sponsor following all the requirements of Subpart XX-10. The undersigned project sponsor holds the legal rights to the offset project, or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO<sub>2</sub> offset allowances under Subpart XX-10 is contingent on meeting the requirements of Subpart XX-10. I authorize the REGULATORY AGENCY or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in this application. I understand that this right to audit shall include the right to enter the physical location of the offset project. I submit to the legal jurisdiction of JURISDICTION.”*

- (vii) A statement and certification report signed by the offset project sponsor certifying that all offset projects for which the sponsor has received CO<sub>2</sub> offset allowances under this Subpart (or similar provisions in the regulations of other participating jurisdictions), under the sponsor’s ownership or control (or under the ownership or control of any entity that controls, is controlled by, or has

common control with the sponsor) are in compliance with all applicable requirements of the TCI-P.

- (viii) A verification report and certification statement signed by an independent verifier accredited pursuant to section XX-10.6 that expresses that the independent verifier has reviewed the entire application and evaluated the following in relation to the applicable requirements at sections XX-10.3 and XX-10.5, and any applicable guidance issued by the REGULATORY AGENCY.
    - (a) The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of sections XX-10.3 and XX-10.5.
    - (b) The adequacy and validity of information supplied by the project sponsor to demonstrate baseline emissions pursuant to the applicable requirements at section XX-10.5.
    - (c) The adequacy of the monitoring and verification plan submitted pursuant to the applicable requirements at section XX-10.5.
    - (d) Such other evaluations and statements as may be required by the REGULATORY AGENCY.
  - (ix) Disclosure of any voluntary or mandatory programs, other than this Part or the corresponding regulations of other individual participating jurisdictions, to which greenhouse gas emissions data related to the offset project has been or will be reported.
  - (x) For offset projects located in a United States jurisdiction that is not a participating jurisdiction, a demonstration that the project sponsor has complied with all requirements of the cooperating regulatory agency in the United States jurisdiction where the offset project is located.
- (2) Consistency applications shall be submitted in a format approved by the REGULATORY AGENCY.

(d) Consistency applications may not be submitted to the REGULATORY AGENCY if a consistency application has already been submitted for the same project, or any portion of the same project, in another participating jurisdiction, unless the consistency application was rejected by that participating jurisdiction solely because more of the CO<sub>2</sub> equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in JURISDICTION than in any other participating jurisdiction.

(e) *REGULATORY AGENCY action on consistency applications.*

- (1) *Completeness determination.* Within 30 days following receipt of the consistency application filed pursuant to subdivision (b) of this section, the REGULATORY AGENCY will notify the project sponsor whether the consistency application is complete. A complete consistency application is one that is in an approved format and is determined by the REGULATORY AGENCY to be complete for the purpose of commencing review of the consistency application. In no event shall a completeness determination prevent the REGULATORY AGENCY from requesting additional information in order to enable the REGULATORY AGENCY to make a consistency determination under paragraph (2) of this subdivision.
- (2) *Consistency determination.* Within 90 days of making the completeness determination under paragraph (1) of this subdivision, the REGULATORY AGENCY will issue an approval or disapproval of the consistency application based on its determination as to whether the offset project is consistent with the requirements of section XX-10.3 and subdivisions (b) through (d) of this section and the requirements of the applicable offset project standard of section XX-10.5. For any offset project found to lack consistency with these requirements, the REGULATORY AGENCY will inform the project sponsor of the offset project's deficiencies.

#### **XX-10.5 CO<sub>2</sub> emissions offset project standards.**

(a) *Landfill methane capture and destruction.* To qualify for the award of CO<sub>2</sub> offset allowances under this Subpart, offset projects that capture and destroy methane from

landfills shall meet the requirements of this subdivision and all other applicable requirements of this Subpart.

- (1) *Eligibility.* Eligible offset projects shall occur at landfills that are not subject to the New Source Performance Standards (NSPS) for municipal solid waste landfills, 40 CFR Part 60, Subpart Cc, as that Subpart existed on February 24, 1999, and Subpart WWW, as that Subpart existed on March 26, 2020.
- (2) *Offset project description.* The offset project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of paragraph (1) of this subdivision.

The project narrative shall include the following information.

- (i) Owner and operator of the offset project;
  - (ii) Location and specifications of the landfill where the offset project will occur, including waste in place;
  - (iii) Owner and operator of the landfill where the offset project will occur; and
  - (iv) Specifications of the equipment to be installed and a technical schematic of the offset project.
- (3) *Emissions baseline determination.* The emissions baseline shall represent the potential fugitive landfill emissions of CH<sub>4</sub> (in metric tons of CO<sub>2</sub>e), as represented by the CH<sub>4</sub> collected and metered for thermal destruction as part of the offset project, and calculated in accordance with this paragraph.

$$\text{Emissions (metric tons CO}_2\text{e)} = \frac{V \times M \times (1 - OX) \times GWP}{1000}$$

Where:

V = Volume of CH<sub>4</sub> collected (m<sup>3</sup>);

M = Mass of CH<sub>4</sub> per cubic meter (0.6769 kg/m<sup>3</sup> default value at 1 atmosphere, 20° C);

OX= Oxidation factor (0.10), representing estimated portion of collected CH<sub>4</sub> that would have eventually oxidized to CO<sub>2</sub> if not collected; and

GWP = CO<sub>2</sub>e global warming potential of CH<sub>4</sub> (28).

- (4) *Calculating emissions reductions.* Emissions reductions shall be determined based on potential fugitive CH<sub>4</sub> emissions that would have occurred at the landfill if metered CH<sub>4</sub> collected from the landfill for thermal destruction as part of the offset project was not collected and destroyed. CO<sub>2</sub>e emissions reductions shall be calculated as follows:

$$\text{Emissions Reductions (metric tons CO}_2\text{e)} = \frac{V \times M \times (1 - OX) \times C_{ef} \times GWP}{1000}$$

Where:

V = Volume of CH<sub>4</sub> collected (m<sup>3</sup>);

M = Mass of CH<sub>4</sub> per cubic foot (0.6769 kg/m<sup>3</sup> default value at 1 atmosphere and 20° C);

OX= Oxidation factor (0.10), representing estimated portion of collected CH<sub>4</sub> that would have eventually oxidized to CO<sub>2</sub> if not collected;

C<sub>ef</sub> = Combustion efficiency of methane control technology (0.98); and

GWP = CO<sub>2</sub>e global warming potential of CH<sub>4</sub> (28).

- (5) *Monitoring and verification requirements.* Offset projects shall employ a landfill gas collection system that provides continuous metering and data computation of landfill gas volumetric flow rate and CH<sub>4</sub> concentration. Annual monitoring and verification reports shall include monthly volumetric flow rate and CH<sub>4</sub> concentration data, including documentation that the



CH<sub>4</sub> was actually supplied to the combustion source. Monitoring and verification are also subject to the following requirements.

- (i) The project sponsor shall submit a monitoring and verification plan as part of the consistency application that includes a quality assurance and quality control program associated with equipment used to determine landfill gas volumetric flow rate and CH<sub>4</sub> composition. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated, and calibrated based on manufacturer recommendations, as well as provisions for the retention of maintenance records for audit purposes. The monitoring and verification plan shall be certified by an independent verifier accredited pursuant to section XX-10.6.
- (ii) The project sponsor shall annually verify landfill gas CH<sub>4</sub> composition through landfill gas sampling and independent laboratory analysis using applicable U.S. Environmental Protection Agency laboratory test methods.

(b) *Sequestration of carbon due to reforestation, improved forest management, or avoided conversion.* To qualify for the award of CO<sub>2</sub> offset allowances under this Subpart, offset projects that involve reforestation, improved forest management, or avoided conversion shall meet all requirements of this subdivision and the forest offset protocol, and all other applicable requirements of this Subpart.

- (1) *Eligibility.* Eligible forest offset projects shall satisfy all eligibility requirements of the forest offset protocol and this Subpart.
- (2) *Offset project description.* The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of paragraph (1) of this subdivision. The offset project description must include all information identified in sections 8.1 and 9.1 of the forest offset protocol, and any other information deemed necessary by the REGULATORY AGENCY.

- (3) *Carbon sequestration baseline determination.* Baseline onsite carbon stocks shall be determined as required by sections 6.1.1, 6.1.2, 6.2.1, 6.2.2, 6.2.3, 6.3.1, and 6.3.2 of the forest offset protocol, as applicable.
- (4) *Calculating carbon sequestered.* Net greenhouse gas reductions and greenhouse gas removal enhancements shall be calculated as required by section 6 of the forest offset protocol. The project's risk reversal rating shall be calculated using the forest offset protocol Determination of a Forest Project's Reversal Risk Rating assessment worksheet.
- (5) *Monitoring and verification requirements.* Monitoring and verification are subject to the following requirements.
  - (i) Monitoring and verification reports shall include all forest offset project data reports submitted to the REGULATORY AGENCY, including any additional data required by section 9.2.2 of the forest offset protocol.
  - (ii) The consistency application shall include a monitoring and verification plan certified by an independent verifier accredited pursuant to section XX-10.6. The monitoring and verification plan shall consist of a forest carbon inventory program, as required by section 8.1 of the forest offset protocol.
  - (iii) Monitoring and verification reports shall be submitted not less than every six years, except that the first monitoring and verification report for reforestation projects must be submitted within twelve years of project commencement
- (6) *Forest Offset Project Data Reports.* A project sponsor shall submit a forest offset project data report to the REGULATORY AGENCY for each reporting period. Each forest offset project data report must cover a single reporting period. Reporting periods must be contiguous; there must be no gaps in reporting once the first reporting period has commenced.
- (7) *Carbon sequestration permanence.* The offset project shall meet the following requirements to address reversals of sequestered carbon.

- (i) *Unintentional reversals.* Requirements for unintentional reversals are as follows:
  - (a) The project sponsor must notify the REGULATORY AGENCY of the reversal and provide an explanation for the nature of the unintentional reversal within 30 days of its discovery; and
  - (b) The project sponsor must submit to the REGULATORY AGENCY a verified estimate of current carbon stocks within the offset project boundary within one year of the discovery of the unintentional reversal.
- (ii) *Intentional Reversals.* Requirements for intentional reversals are as follows:
  - (a) If an intentional reversal occurs, the project sponsor shall, within 30 days of the intentional reversal:
    - (1) Provide notice to the REGULATORY AGENCY of the intentional reversal; and
    - (2) Provide a description and explanation of the intentional reversal to the REGULATORY AGENCY.
  - (b) Within one year of the occurrence of an intentional reversal, the project sponsor shall submit to the REGULATORY AGENCY a verified estimate of current carbon stocks within the offset project boundary.
  - (c) If an intentional reversal occurs, and CO<sub>2</sub> offset allowances have been awarded to the offset project, the forest owner must surrender to the REGULATORY AGENCY or its agent for retirement a quantity of CO<sub>2</sub> allowances corresponding to the quantity of CO<sub>2</sub> equivalent metric tons reversed within six months of notice by the REGULATORY AGENCY.
    - (1) Notice by the REGULATORY AGENCY will occur after the verified estimate of carbon stocks has been submitted to the REGULATORY AGENCY, or after

one year has elapsed since the occurrence of the reversal if the project sponsor fails to submit the verified estimate of carbon stocks.

- (2) If the forest owner does not surrender valid CO<sub>2</sub> allowances to the REGULATORY AGENCY or its agent within six months of notice by the REGULATORY AGENCY, the forest owner will be subject to enforcement action and each CO<sub>2</sub> equivalent metric ton of carbon sequestration reversed will constitute a separate violation of this Part and applicable jurisdiction law.

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

- (1) The project sponsor must surrender to the REGULATORY AGENCY or its agent for retirement a quantity of CO<sub>2</sub> allowances in the amount calculated pursuant to project termination provisions in the forest offset protocol within six months of project termination.
- (2) If the project sponsor does not surrender to the REGULATORY AGENCY or its agent a quantity of CO<sub>2</sub> allowances in the amount calculated pursuant to project termination provisions in the forest offset protocol within six months of project termination, the sponsor will be subject to enforcement action and each CO<sub>2</sub> offset allowance not surrendered will constitute a separate violation of this Part and applicable jurisdiction law

(iii) *Disposition of Forest Sequestration Projects After a Reversal.* If a reversal lowers the forest offset project's actual standing live carbon stocks below its project baseline standing live carbon

stocks, the forest offset project will be terminated by the  
REGULATORY AGENCY.

- (8) *Projects that Have Been Awarded Credits by a Voluntary Greenhouse Gas Reduction Program.* The provisions of paragraphs XX-10.3(c)(4) and XX-10.4(b)(2) shall not apply to forest projects that have been awarded credits under a voluntary greenhouse gas reduction program provided that the following conditions are satisfied. For such projects, the number of CO<sub>2</sub> offset allowances will be calculated pursuant to the requirements of this subdivision, without regard to quantity of credits that were awarded to the project under the voluntary program.
- (i) The project satisfies all other general requirements of this Subpart, including all specific requirements of this subdivision, for all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO<sub>2</sub> offset allowances pursuant to section XX-10.7.
  - (ii) At the time of submittal of the consistency application for the project, the project submits forest offset data reports and a monitoring and verification report covering all reporting periods for which the project has been awarded credits under a voluntary greenhouse gas program and also intends to be awarded CO<sub>2</sub> offset allowances pursuant to section XX-10.7. Forest offset data reports and monitoring and verification reports must meet all requirements of paragraphs (5) and (6) of this subdivision.
  - (iii) The consistency application includes information sufficient to allow the REGULATORY AGENCY to make the following determinations, and the voluntary greenhouse gas program has published information on its website to allow the REGULATORY AGENCY to verify the information included in the consistency application.
    - (a) The offset project has met all legal and contractual requirements to allow it to terminate its relationship with the

voluntary greenhouse gas program, and such termination has been completed.

- (b) The project sponsor or voluntary greenhouse gas program has cancelled or retired all credits that were awarded for carbon sequestration that occurred during the time periods for which the project intends to be awarded CO<sub>2</sub> offset allowances pursuant to section XX-10.7, and such credits were cancelled or retired for the sole purpose of allowing the project to be awarded CO<sub>2</sub> offset allowances pursuant to section XX-10.7.

(c) *Avoided methane emissions from agricultural manure management operations.*

To qualify for the award of CO<sub>2</sub> offset allowances under this Subpart, offset projects that capture and destroy methane from animal manure and organic food waste using anaerobic digesters shall meet the requirements of this subdivision and all other applicable requirements of this Subpart.

(1) *Eligibility.*

- (i) Eligible offset projects shall consist of the destruction of that portion of methane generated by an anaerobic digester that would have been generated in the absence of the offset project through the uncontrolled anaerobic storage of manure or organic food waste.
- (ii) Eligible offset projects shall employ only manure-based anaerobic digester systems using livestock manure as the majority of digester feedstock, defined as more than 50% of the mass input into the digester on an annual basis. Organic food waste used by an anaerobic digester shall only be that which would have been stored in anaerobic conditions in the absence of the offset project.
- (iii) The provisions of paragraphs XX-10.3(c)(2) and (3) shall not apply to agricultural manure management offset projects provided either of the following requirements are met.

- (a) The offset project is located in a jurisdiction that has a market penetration rate for anaerobic digester projects of 5% or less. The market penetration determination shall utilize the most recent market data available at the time of submission of the consistency application pursuant to section XX-10.4 and shall be determined as follows:

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

Where:

$MG_{AD}$  = Average annual manure generation for the number of dairy cows and swine serving all anaerobic digester projects in the applicable jurisdiction at the time of submission of a consistency application pursuant to section XX-10.4.

$MG_{JURISDICTION}$  = Average annual manure production of all dairy cows and swine in the jurisdiction at the time of submission of a consistency application pursuant to section XX-10.4.

- (b) The offset project is located at a farm with 4,000 or less head of dairy cows, or a farm with equivalent animal units, assuming an average live weight for dairy cows (lbs./cow) of 1,400 lbs., or, if the project is a regional-type digester, total annual manure input to the digester is designed to be less than the average annual manure produced by a farm with 4,000 or less head of dairy cows, or a farm with equivalent animal units, assuming an average live weight for dairy cows (lbs./cow) of 1,400 lbs.
- (2) *Offset project description.* The project sponsor shall provide a detailed narrative of the offset project actions to be taken, including documentation that the offset project meets the eligibility requirements of paragraph (1) of

this subdivision. The offset project narrative shall include the following information:

- (i) Owner and operator of the offset project;
  - (ii) Location and specifications of the facility where the offset project will occur;
  - (iii) Owner and operator of the facility where the offset project will occur;
  - (iv) Specifications of the equipment to be installed and a technical schematic of the offset project; and
  - (v) Location and specifications of the facilities from which anaerobic digester influent will be received, if different from the facility where the offset project will occur.
- (3) *Emissions baseline determination.* The emissions baseline shall represent the potential emissions of the CH<sub>4</sub> that would have been produced in a baseline scenario under uncontrolled anaerobic storage conditions and released directly to the atmosphere in the absence of the offset project.
- (i) Baseline CH<sub>4</sub> emissions shall be calculated as follows:

$$E_b = \frac{V_m \times M}{1000} \times GWP$$

Where:

E<sub>b</sub> = Potential CO<sub>2</sub>e emissions due to calculated CH<sub>4</sub> production under site-specific anaerobic storage and weather conditions (metric tons);

V<sub>m</sub> = Volume of CH<sub>4</sub> produced each month from decomposition of volatile solids in a baseline uncontrolled anaerobic storage scenario under site-specific storage and weather conditions for the facility at which the manure or organic food waste is generated (m<sup>3</sup>);



M = Mass of CH<sub>4</sub> per cubic meter (0.6769 kg/m<sup>3</sup> default value at one atmosphere and 20°C); and

GWP = Global warming potential of CH<sub>4</sub> (28).

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

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

Where:

VS = Volatile solids as determined from the equation:

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

Where:

M<sub>m</sub> = Mass of manure or organic food waste produced per month (kg)

TS% = Concentration (percent) of total solids in manure or organic food waste as determined through EPA 160.3 testing method (U.S.EPA Method Number 160.3, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020));

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

VS<sub>avail</sub> = Volatile solids available for decomposition in manure or organic food waste storage each month as determined from the equation:

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

Where:

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

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

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

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

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

Where:

$f$  = Conversion efficiency of VS to CH<sub>4</sub> per month;

$E$  = Activation energy constant (15,175 cal/mol);

$T_2$  = Average monthly ambient temperature for facility where manure or organic food waste is generated (converted from ° Celsius to ° Kelvin) as determined from the nearest National Weather Service certified weather station (if reported

temperature °C > 5° C; if reported temperature °C < 5° C, then  
 $f = 0.104$ );

$T_1 = 303.15$  (30° C converted to °K); and

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

- (iii) The volume of CH<sub>4</sub> produced (m<sup>3</sup>) from decomposition of volatile solids shall be calculated as follows:

$$V_m = (VS_{dec} \times B_o)$$

Where:

$V_m$  = Volume of CH<sub>4</sub> (m<sup>3</sup>)

$VS_{dec}$  = Volatile solids decomposed (kg)

$B_o$  = Manure or organic food waste type-specific maximum methane generation constant (m<sup>3</sup> CH<sub>4</sub>/kg VS decomposed).  
For dairy cow manure,  $B_o = 0.24$  m<sup>3</sup> CH<sub>4</sub>/kg VS decomposed.  
The methane generation constant for other types of manure shall be those cited at U.S. EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2010, Annex 3, Table A 180 (U.S. EPA, February 2017), unless the project sponsor proposes an alternate methane generation constant and that alternate is approved by the REGULATORY AGENCY. If the project sponsor proposes to use a methane generation constant other than the ones found in the above-cited reference, the project sponsor must provide justification and documentation to the REGULATORY AGENCY.

- (4) *Calculating emissions reductions.* Emissions reductions shall be calculated as follows:

$$ER_t = E_b - E_p$$

Where:

$ER_t$  = CO<sub>2</sub>e emissions reductions due to project activities (metric tons);

$E_b$  = Potential CO<sub>2</sub>e emissions due to calculated CH<sub>4</sub> production under site-specific anaerobic storage and weather conditions (metric tons);

$E_p$  = CO<sub>2</sub>e emissions due to project activities additional to baseline (metric tons), including, but not limited to, manure transportation, flaring, venting, and effluent management.

Emissions reductions may not exceed the potential emissions of the anaerobic digester, as represented by the annual volume of CH<sub>4</sub> produced by the anaerobic digester, as monitored pursuant to paragraph (5) of this subdivision. CO<sub>2</sub> emissions due to transportation of manure and organic food waste from the site where the manure and organic food waste was generated to the anaerobic digester shall be subtracted from the emissions reduction calculated pursuant to subparagraphs (3)(i) through (iii) of this subdivision. Transport CO<sub>2</sub> emissions shall be determined through one of the following methods:

- (i) Documentation of transport fuel use for all shipments of manure and organic food waste from off-site to the anaerobic digester during each reporting year and a log of transport miles for each shipment. Off-site is defined as a location that is not contiguous with the property where the anaerobic digester is located. CO<sub>2</sub> emissions shall be determined through the application of an emissions factor for the fuel type used. If this option is chosen, the following CO<sub>2</sub> emissions factors shall be applied as appropriate.
  - (a) Diesel fuel: 10.393 kg. CO<sub>2</sub>/gallon.
  - (b) Motor gasoline: 9.017 kg. CO<sub>2</sub>/gallon.

- (c) Other fuel: submitted CO<sub>2</sub> emissions factor approved by the REGULATORY AGENCY.
- (ii) Documentation of total short tons of manure and organic food waste transported from off-site for input into the anaerobic digester during each reporting year, as monitored pursuant to subparagraph (5)(i) of this subdivision, and a log of transport miles and fuel type used for each shipment. CO<sub>2</sub> emissions shall be determined through the application of a short ton-mile transport emission factor for the fuel type used. If this option is chosen, the following emissions factors shall be applied as appropriate for each short ton of manure delivered, and multiplied by the number of miles transported.
  - (a) Diesel fuel: 0.059 kg. CO<sub>2</sub> per short ton-mile.
  - (b) Motor gasoline: 0.059 kg. CO<sub>2</sub> per short ton-mile.
  - (c) Other fuel: submitted emissions factor approved by the REGULATORY AGENCY.
- (5) *Monitoring and verification requirements.* Offset projects shall employ a system that provides metering of biogas volumetric flow rate and determination of CH<sub>4</sub> concentration. Annual monitoring and verification reports shall include monthly biogas volumetric flow rate and CH<sub>4</sub> concentration determination. Monitoring and verification shall also meet the following requirements.
  - (i) If the offset project is a regional-type digester, manure and organic food waste from each distinct source supplying to the anaerobic digester shall be sampled monthly to determine the amount of volatile solids present. Any emissions reduction will be calculated according to mass of manure and organic food waste (kg) being digested and percentage of volatile solids present before digestion, consistent with the requirements at paragraph (3) of this subdivision and subparagraph (iii) of this paragraph and apportioned accordingly among sources. The project sponsor shall provide

supporting material and receipts tracking the monthly receipt of manure and organic food waste (kg) used to supply the anaerobic digester from each supplier.

- (ii) If the offset project includes the digestion of organic food waste eligible pursuant to subparagraph (1)(ii) of this subdivision, organic food waste shall be sampled monthly to determine the amount of volatile solids present before digestion, consistent with the requirements at paragraph (3) of this subdivision and subparagraph (iii) of this paragraph, and apportioned accordingly.
- (iii) The project sponsor shall submit a monitoring and verification plan as part of the consistency application that includes a quality assurance and quality control program associated with equipment used to determine biogas volumetric flow rate and CH<sub>4</sub> composition. The monitoring and verification plan shall be specified in accordance with the applicable monitoring requirements listed in Table 8 below. The monitoring and verification plan shall also include provisions for ensuring that measuring and monitoring equipment is maintained, operated, and calibrated based on manufacturer's recommendations, as well as provisions for the retention of maintenance records for audit purposes. The monitoring and verification plan shall be certified by an independent verifier accredited pursuant to section XX-10.6.

Table 3. Monitoring requirements

<u>Parameter</u>	<u>Measurement Unit</u>	<u>Frequency of Sampling</u>	<u>Sampling Method(s)</u>
Influent flow (mass) into the digester	Kilograms (kg) per month (wet mass)	Monthly total into the digester	a) Recorded mass b) Digester influent pump flow c) Livestock population and application of American Society of Agricultural and Biological Engineers (ASABE) standard (ASAE D384.2, March 2005)
Influent total solids concentration (TS)	Percent (of sample)	Monthly, depending upon recorded variations	U.S. EPA Method Number 160.3, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020)
Influent volatile solids (VS) concentration	Percent (of TS)	Monthly, depending upon recorded variations	USEPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (MCAWW) (EPA/600/4-79/020)
Average monthly ambient temperature	Temperature °C	Monthly (based on farm averages)	Closest National Weather Service-certified weather station
Volume of biogas produced by digester	Cubic meter (m <sup>3</sup> )	Continuous, totalized monthly	Flow meter
Methane composition of biogas produced by digester	Percent (of sample)	Quarterly	Bag sampling and third party laboratory analysis using applicable U.S. EPA test methods

## **XX-10.6      Accreditation of independent verifiers.**

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

- (1)    *Verifier minimum requirements.* Each accredited independent verifier shall demonstrate knowledge of the following topics:
  - (i)    Utilizing engineering principles;
  - (ii)   Quantifying greenhouse gas emissions;
  - (iii)   Developing and evaluating air emissions inventories;
  - (iv)   Auditing and accounting principles;
  - (v)    Knowledge of information management systems;
  - (vi)   Knowledge of the requirements of this Subpart and other applicable requirements of this Part; and
  - (vii)   Such other qualifications as may be required by the REGULATORY AGENCY to provide competent verification services as required for individual offset categories specified at section XX-10.5.
- (2)    *Organizational qualifications.* Accredited independent verifiers shall demonstrate that they meet the following requirements:
  - (i)    Verifiers shall have no direct or indirect financial relationship, beyond a contract for provision of verification services, with any offset project developer or project sponsor;
  - (ii)   Verifiers shall employ staff with professional licenses, knowledge, and experience appropriate to the specific category(ies) of offset projects at section XX-10.5 that they seek to verify.
  - (iii)   Verifiers shall hold a minimum of one million U.S. dollars of professional liability insurance. If the insurance is in the name of a related entity, the verifier shall disclose the financial relationship between the verifier and the related entity, and provide documentation supporting the description of the relationship; and



(iv) Verifiers shall demonstrate that they have implemented an adequate management protocol to identify potential conflicts of interest with regard to an offset project, offset project developer, or project sponsor, or any other party with a direct or indirect financial interest in an offset project that is seeking or has been granted approval of a consistency application pursuant to subdivision XX-10.4(e), and remedy any such conflicts of interest prior to providing verification services.

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

(b) *Application for accreditation.* An application for accreditation shall not contain any proprietary information, and shall include the following in a format approved by the REGULATORY AGENCY:

- (1) The applicant's name, address, e-mail address, and telephone number;
- (2) Documentation that the applicant has at least two years of experience in each of the knowledge areas specified at subparagraphs (a)(1)(i) through (v) of this section, and as may be required pursuant to subparagraph (a)(1)(vii) of this section;
- (3) Documentation that the applicant has successfully completed the requirements at paragraph (a)(3) of this section, as applicable;
- (4) A sample of at least one work product that provides supporting evidence that the applicant meets the requirements at paragraphs (a)(1) and (2) of this section. The work product shall have been produced, in whole or part, by the applicant and shall consist of a final report or other material provided to a client under contract in previous work. For a work product that was jointly produced by the applicant and another entity, the role of the applicant in the work product shall be clearly explained;

- (5) Documentation that the applicant holds professional liability insurance as required pursuant to subparagraph (a)(2)(iii) of this section; and
- (6) Documentation that the applicant has implemented an adequate management protocol to address and remedy any conflict of interest issues that may arise, as required pursuant to subparagraph (a)(2)(iv) of this section.

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

(d) *Reciprocity.* Independent verifiers accredited in other jurisdictions, whether or not they are participating jurisdictions, may be deemed to be accredited in JURISDICTION, at the discretion of the REGULATORY AGENCY.

(e) *Conduct of accredited verifiers.*

- (1) Prior to engaging in verification services for an offset project sponsor, the accredited verifier shall disclose all relevant information to the REGULATORY AGENCY to allow for an evaluation of potential conflict of interest with respect to an offset project, offset project developer, or project sponsor. The accredited verifier shall disclose information concerning its ownership, past and current clients, related entities, as well as any other facts or circumstances that have the potential to create a conflict of interest.
- (2) Accredited verifiers shall have an ongoing obligation to disclose to the REGULATORY AGENCY any facts or circumstances that may give rise to a conflict of interest with respect to an offset project, offset project developer, or project sponsor.
- (3) The REGULATORY AGENCY may reject a verification report and certification statement from an accredited verifier, submitted as part of a

consistency application required pursuant to subdivision XX-10.4(b) or submitted as part of a monitoring and verification report submitted pursuant to subdivision XX-10.7(b), if the REGULATORY AGENCY determines that the accredited verifier has a conflict of interest related to the offset project, offset project developer, or project sponsor.

- (4) The REGULATORY AGENCY may revoke the accreditation of a verifier at any time given cause, for any of the following:
  - (i) Failure to fully disclose any issues that may lead to a conflict of interest situation with respect to an offset project, offset project developer, or project sponsor;
  - (ii) The verifier is no longer qualified due to changes in staffing or other criteria;
  - (iii) Negligence or neglect of responsibilities pursuant to the requirements of this Subpart; and
  - (iv) Intentional misrepresentation of data or other intentional fraud.
- (f) *Recordkeeping.* The independent verifiers accredited under this section shall keep in its possession, custody, or control all verification applications, disclosures, verification reports and certification statements, or other information submitted under this Part, and all material received, reviewed, or generated to provide such application, disclosure, report and statement, or information, for 10 years from submission of the application, disclosure, report and statement, or information. Any recordkeeping period may be extended, at any time prior to the end of the period, by the REGULATORY AGENCY.

#### **XX-10.7 Award and Recordation of CO<sub>2</sub> offset allowances.**

- (a) *Quantities of CO<sub>2</sub> offset allowances awarded, and subsequently recorded.*
  - (1) *Award of CO<sub>2</sub> offset allowances.*
    - (i) Following the issuance of a determination under paragraph XX-10.4(e)(2) approving the consistency application for an offset

project and the approval of a monitoring and verification report under the provisions of subdivision (e) of this section for the offset project, the REGULATORY AGENCY will award one CO<sub>2</sub> offset allowance for each metric ton of reduction in CO<sub>2</sub> equivalent emissions or sequestration of CO<sub>2</sub> demonstrated to be achieved on or after January 1, 2023.

- (2) *Recordation of CO<sub>2</sub> offset allowances.* After CO<sub>2</sub> offset allowances are awarded under paragraph (1) of this subdivision, the REGULATORY AGENCY or its agent shall record such CO<sub>2</sub> offset allowances in the project sponsor's general account.

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

For an offset project, the monitoring and verification report must be submitted within 6 months following the completion of the last calendar year during which the offset project achieved CO<sub>2</sub> equivalent emissions reductions or sequestration of CO<sub>2</sub> for which the project sponsor seeks the award of CO<sub>2</sub> offset allowances.

- (c) *Contents of monitoring and verification reports.* For an offset project, the monitoring and verification report must include the following information, including the certification statement as required in paragraph XX-6.2(b)(2)(ii), in a format approved by the REGULATORY AGENCY:

- (1) The project's sponsor's name, address, e-mail address, telephone number, and account number;
- (2) The CO<sub>2</sub> equivalent emissions reduction or CO<sub>2</sub> sequestration determination as required by the relevant provisions of section XX-10.5, including a demonstration that the project sponsor complied with the required quantification, monitoring, and verification procedures under section XX-10.5, as well as those outlined in the consistency application approved pursuant to paragraph XX-10.4(e)(2).

- (3) A statement signed by the project sponsor that reads: *“The undersigned project sponsor hereby confirms and attests that the offset project upon which this monitoring and verification report is based is in full compliance with all of the requirements of Subpart XX-10. The project sponsor holds the legal rights to the offset project, or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of CO<sub>2</sub> offset allowances under Subpart XX-10 is contingent on meeting the requirements of Subpart XX-10. I authorize the REGULATORY AGENCY or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in the consistency application that was the subject of a consistency determination by the REGULATORY AGENCY. I understand that this right to audit shall include the right to enter the physical location of the offset project and to make available to the REGULATORY AGENCY or its agent any and all documentation relating to the offset project at the REGULATORY AGENCY’s request. I submit to the legal jurisdiction of JURISDICTION.”*
- (4) A certification signed by the offset project sponsor certifying that all offset projects for which the sponsor has received CO<sub>2</sub> offset allowances under this Subpart (or similar provisions in the rules of other participating jurisdictions), under the sponsor’s ownership or control (or under the ownership or control of any entity that controls, is controlled by, or has common control with the sponsor) are in compliance with all applicable requirements of the TCI-P.
- (5) A verification report and certification statement signed by an independent verifier accredited pursuant to section XX-10.6 that documents that the independent verifier has reviewed the monitoring and verification report and evaluated the following in relation to the applicable requirements at section XX-10.5, and any applicable guidance issued by the REGULATORY AGENCY.

- (i) The adequacy and validity of information supplied by the project sponsor to determine CO<sub>2</sub> equivalent emissions reductions or CO<sub>2</sub> sequestration pursuant to the applicable requirements at section XX-10.5.
  - (ii) The adequacy and consistency of methods used to quantify, monitor, and verify CO<sub>2</sub> equivalent emissions reductions and CO<sub>2</sub> sequestration in accordance with the applicable requirements at section XX-10.5 and as outlined in the consistency application approved pursuant to paragraph XX-10.4(e)(2).
  - (iii) The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of section XX-10.5.
  - (iv) Such other evaluations and verification reviews as may be required by the REGULATORY AGENCY.
- (6) Disclosure of any voluntary or mandatory programs, other than this Part or the corresponding regulations of other individual participating jurisdictions, to which greenhouse gas emissions data related to the offset project have been, or will be reported.
- (7) For offset projects located in a United States jurisdiction that is not a participating jurisdiction, a demonstration that the project sponsor has complied with all requirements of the cooperating regulatory agency in the United States jurisdiction where the offset project is located.

(d) *Prohibition against filing monitoring and verification reports in more than one participating jurisdiction.* Monitoring and verification reports may only be filed under this section for projects that have received consistency application approval under section XX-10.4(e)(2). Monitoring and verification reports may not be filed under this section for projects that have received consistency application approval in other participating jurisdictions.

(e) *REGULATORY AGENCY action on monitoring and verification reports.* The REGULATORY AGENCY will approve or deny a complete monitoring and verification

report filed with the REGULATORY AGENCY pursuant to paragraph (d) of this section, within 45 days following receipt of a complete report. A complete monitoring and verification report is one that is in an approved format and is determined by the REGULATORY AGENCY to be complete for the purpose of commencing review of the monitoring and verification report. In no event shall a completeness determination prevent the REGULATORY AGENCY from requesting additional information in order to enable the REGULATORY AGENCY to approve or deny a monitoring and verification report.

## **Subpart XX-11      CO<sub>2</sub> Allowance Auctions**

### **XX-11.1      Purpose.**

The purpose of this Subpart is to provide for the administration and implementation by the REGULATORY AGENCY of CO<sub>2</sub> allowance auctions to promote the purposes of this Part.

### **XX-11.2      Implementation of allowance auctions.**

- (a) The REGULATORY AGENCY shall participate in CO<sub>2</sub> allowance auctions.
- (b) Implementation and administrative support functions for any multijurisdictional auction may be delegated to an agent.

### **XX-11.3      Commencement, frequency, and quantity of CO<sub>2</sub> allowance auctions.**

- (a) *Frequency.* CO<sub>2</sub> allowance auctions will be held quarterly or as often as practical and necessary to effectuate the objectives of this Part.

(b) *Calendar.* The REGULATORY AGENCY shall maintain a calendar of anticipated auction dates on its website. The calendar shall indicate the auction format and the number of CO<sub>2</sub> allowances and allocation years of CO<sub>2</sub> allowances to be auctioned at each auction. The REGULATORY AGENCY may periodically revise the calendar, provided that the information relevant to the next scheduled CO<sub>2</sub> allowance auction shall be fixed no later than 45 days prior to such auction. The calendar shall include the dates of at least the next four CO<sub>2</sub> allowance auctions and may also include the anticipated number of CO<sub>2</sub> allowances to be auctioned at each auction. The REGULATORY AGENCY may periodically modify the anticipated dates of auctions listed on such calendar.

(c) *Quantity.* Prior to the end of each control period, CO<sub>2</sub> allowances for such control period will be made available for sale. CO<sub>2</sub> allowances will be made available for sale by allocation year.

(d) *Lot Sizes.* The REGULATORY AGENCY may make CO<sub>2</sub> allowances available for sale in a minimum lot size of CO<sub>2</sub> allowances.

(e) *Reserve price.*

- (1) In administering auctions, the REGULATORY AGENCY shall employ the use of a reserve price and shall publish or announce such reserve price prior to each auction.
- (2) No CO<sub>2</sub> allowances shall be sold at any auction for a price below the reserve price for that auction.
- (3) If the total demand for CO<sub>2</sub> allowances at an auction is less than or equal to the total number of CO<sub>2</sub> allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

(f) *CO<sub>2</sub> cost containment reserve allowances.*



- (1) CO<sub>2</sub> CCR allowances shall only be sold at an auction in which total demand for CO<sub>2</sub> allowances, above the CCR trigger price, exceeds the number of CO<sub>2</sub> allowances available for purchase at the auction, not including any CO<sub>2</sub> CCR allowances.
  - (2) The number of CO<sub>2</sub> CCR allowances offered for sale by the REGULATORY AGENCY or its agent at the auction shall be equal to the number of CO<sub>2</sub> CCR allowances in the JURISDICTION AUCTION ACCOUNT at the time of the auction.
  - (3) After all of the CO<sub>2</sub> CCR allowances in the JURISDICTION AUCTION ACCOUNT have been sold in a given calendar year, no additional CO<sub>2</sub> CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition of paragraph (1) of this subdivision is met at an auction.
  - (4) At an auction in which CO<sub>2</sub> CCR allowances are sold, the reserve price at the auction shall be the CCR trigger price.
  - (5) If the condition of paragraph (1) of this subdivision is not satisfied, no CO<sub>2</sub> CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve price.
- (g) *CO<sub>2</sub> emission containment allowances.*
- (1) CO<sub>2</sub> ECR allowances shall only be withheld from an auction if the demand for CO<sub>2</sub> allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.
  - (2) If the condition in paragraph (1) of this subdivision is met at an auction, then the maximum number of CO<sub>2</sub> ECR allowances that may be withheld from that auction will be equal to the quantity specified in section XX-5.1 minus the total quantity of CO<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year. Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the JURISDICTION ECR ACCOUNT.

#### **XX-11.4 Auction format.**

The auctions shall be conducted as a single round sealed-bid uniform price auction.

#### **XX-11.5 Participant eligibility and limitations.**

- (a) JURISDICTION fuel suppliers shall be eligible to participate in all auctions so long as they meet the requirements of section XX-11.6, except as provided in subdivision (f) of this section.
- (b) Any auction shall be open to all who wish to participate so long as they meet the requirements in section XX-11.6, except as provided in subdivision (f) of this section.
- (c) Any party wishing to participate in an auction will be required to open and maintain a compliance or general account pursuant to the provisions in Subpart XX-6.
- (d) *Limitations.* Participation in any auction may be limited to the level of financial security provided.
- (e) The REGULATORY AGENCY may institute a purchasing or bidding limitation in each auction. This limitation shall not be greater than 25% of the allowances available in an auction not including the CO<sub>2</sub> CCR allowances. Any such limitations shall be included in the auction notice.
- (f) Any applicant or bidder that has been found to have violated any rule, regulation, or law associated with any commodity market or exchange may be denied eligibility or precluded from participation in CO<sub>2</sub> allowance auctions.

#### **XX-11.6 Participation requirements.**

(a) *Qualification.* Any party wishing to participate in a CO<sub>2</sub> allowance auction or auctions shall submit an application for qualification in the form and manner provided in the auction notice to the REGULATORY AGENCY on or before the application deadline date specified in the auction notice. As a part of their application, applicants will be required to provide information and documentation relating to their ability and authority to execute bids and honor contractual obligations. Such documentation may include but may not be limited to:

- (1) Information and documentation regarding the corporate identity, ownership, affiliations, and capital structure of the applicant;
- (2) Declarations as to the beneficial ownership of any CO<sub>2</sub> allowance that may be acquired through the auction;
- (3) The identification of any indictment or felony conviction of any member, director, principle, partner or officer of the applicant or any affiliate or related entity;
- (4) The identification of any previous or pending investigation with respect to any alleged violation of any rule, regulation, or law associated with any commodity market or exchange.
- (5) Evidence demonstrating that such applicant has opened a general or compliance account as provided for in the provisions in Subpart XX-6 and identification of relationships with any other account holder.
- (6) Applicants may be denied qualification based on the information provided or upon information as to such applicant obtained independently of the application process.

(b) The REGULATORY AGENCY will review each application for qualification and make determinations as to the qualification of the applicant to participate or otherwise submit bids in CO<sub>2</sub> allowance auctions. Failure to provide any information required for the CO<sub>2</sub> allowance auction may result in the application being declared incomplete or otherwise deficient. If an application for qualification is determined to be incomplete or otherwise deficient, the REGULATORY AGENCY shall notify the applicant and state the reason

therefore. The REGULATORY AGENCY may offer an opportunity for the applicant to remedy its application by the deadline pursuant to the auction notice. Qualified applicants will be notified by the REGULATORY AGENCY pursuant to the auction notice.

(c) Parties found qualified for participation in an auction will be qualified for subsequent CO<sub>2</sub> allowance auctions, provided that there has been no material change to the information provided in the application, the party is within one of the categories of eligible bidders described in the auction notice for such auction, and such party meets all other requirements for participation. Any party found qualified shall provide notice to the REGULATORY AGENCY of any material change to the information provided in the application for qualification by the date on which qualification applications for the next auction are due. Such notice shall state the date the change occurred and describe the change in sufficient detail to enable the REGULATORY AGENCY to determine if a change in the qualification status to participate in future auctions is warranted.

(d) The REGULATORY AGENCY may require parties previously found qualified to up-date and re-file applications for qualification on an annual basis or as requested by the REGULATORY AGENCY.

(e) The REGULATORY AGENCY may suspend or revoke previously granted qualification of any party if such party fails to comply with this section.

(f) *Bid Submittal Instructions.* All bids shall be in a form prescribed by the REGULATORY AGENCY, which shall be made available electronically on a website, as appropriate. All bids submitted will be considered binding offers for the purchase of CO<sub>2</sub> allowances under this section.

(g) If the REGULATORY AGENCY determines that a bidder has provided false or misleading information on its application, has omitted required information from its application, has violated any part of the auction rules, or has otherwise failed to comply

with any provision of this Part, the REGULATORY AGENCY may prohibit the bidder from participating in any future CO<sub>2</sub> allowance auctions.

(h) To receive approval to participate in any specific auction, otherwise qualified bidders will be required to provide financial security in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the REGULATORY AGENCY. Financial security shall be provided in a form and manner as described in the auction notice.

- (1) Parties who have posted financial security may request return of their financial security at any time prior to or following any CO<sub>2</sub> allowance auction, and the REGULATORY AGENCY shall return said financial security provided that the REGULATORY AGENCY has no current or pending claim to such security as a result of a failure of the party to comply with this Part or to pay the full amount of its accepted bid when due.
- (2) Financial security may be forfeited to and retained by the REGULATORY AGENCY in the event the bidder's offer is accepted in an auction and the bidder fails to tender payment of the full amount when due.

#### **XX-11.7 Notice of auctions.**

(a) A Notice of CO<sub>2</sub> Allowance Auction ("auction notice") shall be published no later than 45 days prior to the date upon which each auction may be conducted. The auction notice may be transmitted electronically to parties requesting such notice provided they have submitted an e-mail address to the REGULATORY AGENCY or its agent.

- (b) Each auction notice shall include, but not be limited to:
- (1) A specific description of all auction participation requirements,
  - (2) Date, time, and location of the auction,
  - (3) The categories of bidders who will be eligible to bid,

- (4) The quantity of CO<sub>2</sub> allowances to be auctioned,
- (5) The number of CO<sub>2</sub> CCR allowances that will be offered for sale at the auction if the condition of paragraph XX-11.3(f)(1) is met,
- (6) The CCR trigger price for the auction,
- (7) The maximum number of CO<sub>2</sub> ECR allowances that may be withheld from sale at the auction if the condition of paragraph XX-11.3(g)(1) is met,
- (8) The ECR trigger price for the auction,
- (9) The auction reserve price,
- (10) The auction format,
- (11) The amount and type of security required,
- (12) Any participation limitations,
- (13) Information regarding settling and clearing of CO<sub>2</sub> allowance payments,
- (14) Instructions as to qualification applications,
- (15) A standard CO<sub>2</sub> allowance purchase and sale contract,
- (16) Other pertinent rules of the auction, and
- (17) A point of contact for further information.

#### **XX-11.8 Auction reporting and transfer of CO<sub>2</sub> allowances.**

A professional independent market monitor such as a certified public accounting firm or similar entity shall observe the conduct and outcome of each auction and issue a report to the REGULATORY AGENCY or its agent in accordance with professional auditing standards addressing whether the auction was conducted in accordance with the rules and procedures in the respective auction notice. Upon receipt and approval by the REGULATORY AGENCY of the report and upon payment in full by successful bidders, the REGULATORY AGENCY shall transfer or have transferred the corresponding CO<sub>2</sub> allowances to each successful bidder's applicable compliance or general account.

#### **XX-11.9 Auction and secondary market monitoring.**

(a) In advising the REGULATORY AGENCY, a professional independent market monitor will monitor each auction and develop and apply data collection methods, metrics, and analytic techniques, and thresholds for identifying any bidding behavior or activity that may have a significant impact on the efficiency and performance of such auctions, including, but not limited to:

- (1) Collusion,
- (2) Market power, or
- (3) Price manipulation.

(b) A professional independent market monitor will also monitor CO<sub>2</sub> allowance market data and information known to the REGULATORY AGENCY, including CO<sub>2</sub> allowance transactions and associated pricing reported in the TREATS, and other relevant data and information to ensure fair competition, efficient pricing, and protection against collusive or manipulative behavior in the CO<sub>2</sub> allowance auctions and in the TCI-P.

#### **XX-11.10 Anti-deceptive practices.**

It is unlawful for a bidder to use or employ any manipulative, misleading, or deceptive practice in connection with its qualification application or purchase of CO<sub>2</sub> allowances from the REGULATORY AGENCY, including but not limited to any practice that is in contravention of any applicable federal or jurisdiction law or regulation.

#### **XX-11.11 Publication of results.**

Within 10 days of the transfer of CO<sub>2</sub> allowances to successful bidders, the REGULATORY AGENCY shall publish the auction clearing price and the total amount of CO<sub>2</sub> allowances sold in such auction.