

**PRELIMINARY DRAFT FOR REVIEW**

Note: The highlighted language identifies deviations from the Regional Greenhouse Gas Initiative 2017 Model Rule.

**DRAFT PROPOSED RULEMAKING**  
**Annex A**  
**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart C. PROTECTION OF NATURAL RESOURCES**  
**ARTICLE III. AIR RESOURCES**

**CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION**

**Subchapter E. CO<sub>2</sub> BUDGET TRADING PROGRAM**

**GENERAL PROVISIONS**

Sec.

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- 145.302. Definitions.
- 145.303. Measurements, abbreviations and acronyms.
- 145.304. Applicability.
- 145.305. Limited exemption for CO<sub>2</sub> budget units with electrical output to the electric grid restricted by permit conditions.
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*(Editor's Note: Sections 145.301—145.414 are new and printed in regular type to enhance readability.)*

**§ 145.301. Purpose.**

This subchapter establishes the Pennsylvania component of the CO<sub>2</sub> Budget Trading Program, which is designed to reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources in a manner that is protective of public health, welfare and the environment and is economically efficient.

**§ 145.302. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Account number*—The identification number given by the Department or its agent to each CO<sub>2</sub> Allowance Tracking System account.

*Acid rain emissions limitation*—A limitation on emissions of sulfur dioxide or NO<sub>x</sub> under the Acid Rain Program under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7651—7651o).

*Acid Rain Program*—A multi-state sulfur dioxide and NO<sub>x</sub> air pollution control and emission reduction program established by the Administrator under Title IV of the Clean Air Act and 40 CFR Parts 72—78.

*Adjustment for banked allowances*—An adjustment applied to the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget for an allocation year to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO<sub>2</sub> budget sources in all of the participating states at the end of a control period and as reflected in the CO<sub>2</sub> Allowance Tracking System on March 15 of the prior calendar year.

*Administrator*—The Administrator of the EPA or the Administrator's authorized representative.

*Air pollution reduction account*—The general account established by the Department from which allowances will be sold or distributed in order to provide funds for the prevention, control, reduction and abatement of air pollution and the administration of the Pennsylvania component of the CO<sub>2</sub> Budget Trading Program.

*Allocate or allocation*—The determination by the Department of the number of CO<sub>2</sub> allowances to be recorded in the compliance account of a CO<sub>2</sub> budget source, the waste coal set-aside account, the air pollution reduction account, or the general account of the sponsor of an approved CO<sub>2</sub> emissions offset project.

*Allocation year*—A calendar year for which the Department allocates or awards CO<sub>2</sub> allowances pursuant to § 145.341 and § 145.391—145.397 (relating to Pennsylvania CO<sub>2</sub> trading program base budget and CO<sub>2</sub> emissions offset projects). The allocation year of each CO<sub>2</sub> allowance is reflected in the unique identification number given to the allowance pursuant to § 145.354(c) (relating to recordation of CO<sub>2</sub> allowance allocations).

*Allowance auction or auction*—An auction in which the Department or its agent offers CO<sub>2</sub> allowances for sale.

*Ascending price, multiple-round auction*—An auction that starts with an opening price that increases each round by predetermined increments. In each round, a bidder offers the quantity of CO<sub>2</sub> allowances the bidder is willing to purchase at the posted price. Rounds continue as long as demand exceeds the quantity of CO<sub>2</sub> allowances offered for sale. At the completion of the final round, CO<sub>2</sub> allowances will be allocated as follows:

(i) At the final price to remaining bidders, unsold CO<sub>2</sub> allowances to be withheld for a future auction.

(ii) At the penultimate price, first to final round bidders and then to bidders in the penultimate round in chronological order of bid during the penultimate round for all remaining allowances.

(iii) According to an alternative mechanism designed to effectuate the objectives of this subchapter.

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

*Attribute credit*—A unit that represents the attributes related to one megawatt-hour of electricity generation.

*Automated Data Acquisition and Handling System*—The component of the continuous emissions monitoring system, or other emissions monitoring system approved for use under § 145.371, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by § 145.371.

*Award*—The determination by the Department of the number of CO<sub>2</sub> offset allowances to be recorded in the general account of a project sponsor under § 145.397. Award is a type of allocation.

*Beneficial interest*—A profit, benefit or advantage resulting from the ownership of a CO<sub>2</sub> allowance.

*Bidder*—A qualified participant who has met the requirements of § 145.406, § 145.407, and § 145.408 and has been determined by the Department to be eligible to participate in a specified CO<sub>2</sub> allowance auction pursuant to § 145.408.

*Billing meter*— The device used to measure electric or thermal output for commercial billing under a contract between the owner or operator of the facility selling the electric or thermal output and the owner or operator of the entity purchasing the electric or thermal output, where no owner or operator of either the seller or the buyer is also an owner or operator of the other party.

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

*CEMS—continuous emissions monitoring system*—The equipment required under § 145.371 to sample, analyze, measure and provide, by means of readings recorded at least once every 15 minutes, using an automated data acquisition and handling system, a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration, as applicable, in a manner consistent with 40 CFR Part 75 (relating to continuous

emission monitoring) and § 145.371. The following systems are types of continuous emissions monitoring systems required under § 145.371.

(i) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh).

(ii) A nitrogen oxides emissions rate (or NO<sub>x</sub>-diluent) monitoring system, consisting of a NO<sub>x</sub> pollutant concentration monitor, a diluent gas (CO<sub>2</sub> or O<sub>2</sub>) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO<sub>x</sub> concentration, in parts per million (ppm), diluent gas concentration, in percent CO<sub>2</sub> or O<sub>2</sub>; and NO<sub>x</sub> emissions rate, in pounds per million British thermal units (lb/MMBtu).

(iii) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H<sub>2</sub>O.

(iv) A carbon dioxide monitoring system, consisting of a CO<sub>2</sub> pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO<sub>2</sub> concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO<sub>2</sub> emissions, in percent CO<sub>2</sub>.

(v) An oxygen monitoring system, consisting of an O<sub>2</sub> concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O<sub>2</sub>, in percent O<sub>2</sub>.

*COATS—CO<sub>2</sub> allowance tracking system—*

(i) A system by which the Department or its agent records allocations, deductions and transfers of CO<sub>2</sub> allowances under the CO<sub>2</sub> Budget Trading Program.

(ii) The system may also be used to track all of the following:

(A) CO<sub>2</sub> emissions offset projects.

(B) CO<sub>2</sub> allowance prices.

(C) Emissions from affected sources.

*CO<sub>2</sub> allowance*—A limited authorization by the Department or a participating state under the CO<sub>2</sub> Budget Trading Program to emit up to 1 ton of CO<sub>2</sub>, subject to all applicable limitations contained in this subchapter.

*CO<sub>2</sub> allowance auction or auction*—The sale of CO<sub>2</sub> allowances through competitive bidding as administered in accordance with §§ 145.401-145.414.

*CO<sub>2</sub> allowance auction website*—The website containing information about CO<sub>2</sub> allowance auctions that may be established by the Department.

*CO<sub>2</sub> allowance deduction or deduct CO<sub>2</sub> allowances*—The permanent withdrawal of CO<sub>2</sub> allowances by the Department or its agent from a COATS compliance account to account for one of the following:

(i) The number of tons of CO<sub>2</sub> emitted from a CO<sub>2</sub> budget source for a control period, the initial control period or an interim control period, determined in accordance with § 145.371.

(ii) The forfeit or retirement of CO<sub>2</sub> allowances as provided by this subchapter.

*CO<sub>2</sub> allowances held or hold CO<sub>2</sub> allowances*—The CO<sub>2</sub> allowances recorded by the Department or its agent or submitted to the Department or its agent for recordation, in accordance with § 145.351 and § 145.361, in a COATS account.

*CO<sub>2</sub> allowance price*—The price for CO<sub>2</sub> allowances in the CO<sub>2</sub> Budget Trading Program for a particular time period as determined by the Department, calculated based on a volume-weighted average of transaction prices reported to the Department, and taking into account prices as reported publicly through reputable sources.

*CO<sub>2</sub> allowance tracking system account*—An account in COATS established by the Department or its agent for purposes of recording the allocation, holding, transferring or deducting of CO<sub>2</sub> allowances. The tracking system may also be used to track CO<sub>2</sub> offset allowances, CO<sub>2</sub> allowance prices and emissions from affected sources.

*CO<sub>2</sub> allowance transfer deadline*—Midnight of the March 1 occurring after the end of the relevant control period, the initial control period and each relevant interim control period or, if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO<sub>2</sub> allowances must be submitted for recordation in a CO<sub>2</sub> budget source's compliance account in order for the source to meet the CO<sub>2</sub> requirements of § 145.305(c) for the control period, the initial control period and each interim control period immediately preceding the deadline.

*CO<sub>2</sub> authorized account representative*—

(i) For a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the person who is authorized by the owner or operator of the source and all CO<sub>2</sub> budget units at the source, in accordance with § 145.311, to represent and legally bind each owner and operator in matters pertaining to the CO<sub>2</sub> Budget Trading Program.

(ii) For a general account, the person who is authorized under § 145.351 to transfer or otherwise dispose of CO<sub>2</sub> allowances held in the general account.

*CO<sub>2</sub> authorized alternate account representative*—

(i) For a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, the alternate person who is authorized by the owner or operator of the source and all CO<sub>2</sub> budget units at the source, in accordance with § 145.311, to represent and legally bind each owner and operator in matters pertaining to the CO<sub>2</sub> Budget Trading Program.

(ii) For a general account, the alternate person who is authorized under § 145.351 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 CO<sub>2</sub> budget source, the tonnage equivalent, in CO<sub>2</sub> emissions in a control period, the initial control period or an interim control period, of the CO<sub>2</sub> allowances available for compliance deduction for the source for a control period, the initial control period or an interim control period.

*CO<sub>2</sub> budget permit condition*—The portion of the legally binding permit issued by the Department pursuant to Chapter 127 (relating to construction, modification, reactivation and operation of sources) to the owner or operator of a CO<sub>2</sub> budget source which specifies the CO<sub>2</sub> Budget Trading Program requirements applicable to the CO<sub>2</sub> budget source.

*CO<sub>2</sub> budget source*—A facility that includes one or more CO<sub>2</sub> budget units.

*CO<sub>2</sub> Budget Trading Program*—A multi-state CO<sub>2</sub> air pollution control and emissions reduction program established pursuant to this subchapter and corresponding regulations in other participating states as a means of reducing emissions of CO<sub>2</sub> from CO<sub>2</sub> budget sources.

*CO<sub>2</sub> budget unit*—A unit that is subject to the CO<sub>2</sub> Budget Trading Program requirements under § 145.304.

*CO<sub>2</sub> CCR allowance or CO<sub>2</sub> cost containment reserve allowance*—A CO<sub>2</sub> allowance that is offered for sale at an auction by the Department for the purpose of containing the cost of CO<sub>2</sub> allowances.

*CO<sub>2</sub> CCR trigger price or CO<sub>2</sub> cost containment reserve trigger price*—The minimum price at which CO<sub>2</sub> CCR allowances are offered for sale by the Department or its agent at an auction.

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

*CO<sub>2</sub> ECR trigger price or CO<sub>2</sub> emissions containment reserve trigger price*—The price below which CO<sub>2</sub> allowances will be withheld from sale by the Department or its agent at an auction.

*CO<sub>2e</sub>—CO<sub>2</sub> equivalent*—The quantity of a given greenhouse gas multiplied by its global warming potential.

*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 § 145.397 and is subject to the relevant compliance deduction limitations of § 145.355(a)(3).

*Combined cycle system*—A system comprised of one or more combustion turbine, heat recovery steam generator and steam turbine configured to improve overall efficiency of electricity generation or steam production.

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

*Commence commercial operation*—With regard to a unit that serves a generator, to have begun to produce steam, gas or other heated medium used to generate electricity for sale or use, including test generation.

(i) For a unit that is a CO<sub>2</sub> budget unit under § 145.304 on the date the unit commences commercial operation, the date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) For a unit that is not a CO<sub>2</sub> budget unit under § 145.304 on the date the unit commences commercial operation, the date the unit becomes a CO<sub>2</sub> budget unit under § 145.304 is the unit's date of commencement of commercial operation.

*Commence operation*—To have begun any mechanical, chemical or electronic process, including, with regard to a unit, start-up of the unit's combustion chamber.

(i) For a unit that is a CO<sub>2</sub> budget unit under § 145.304 on the date of commencement of operation, the date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed or repowered.

(ii) For a unit that is not a CO<sub>2</sub> budget unit under § 145.304 on the date of commencement of operation, the date the unit becomes a CO<sub>2</sub> budget unit under § 145.304 shall be the unit's date of commencement of operation.

*Compliance account*—A COATS account, established by the Department or its agent for a CO<sub>2</sub> budget source under § 145.351, that holds CO<sub>2</sub> allowances available for use by the owner or operator of the source for a control period, the initial control period and each interim control period for the purpose of meeting the CO<sub>2</sub> requirements of § 145.306(c).

*Control period*—A 3-calendar-year period. The sixth control period, which is the first control period in which Pennsylvania will participate in the CO<sub>2</sub> Budget Trading Program, is from January 1, 2024, through December 31, 2026, inclusive. Each subsequent sequential 3-calendar-year period is a separate control period.

*CSAPR*—Cross State Air Pollution Rule.

*CSAPR NO<sub>x</sub> Annual Trading Program*—A multi-state NO<sub>x</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97, subpart AAAAA and 40 CFR 52.38(a) (relating to CSAPR NO<sub>x</sub> annual trading program; and what are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?), including a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO<sub>x</sub>.

*CSAPR NO<sub>x</sub> Ozone Season Trading Program*—A multi-state NO<sub>x</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97, subpart BBBBB (relating to CSAPR NO<sub>x</sub> ozone season group 1 trading program) and 40 CFR 52.38(b), including a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.38(b)(5), as a means of mitigating interstate transport of ozone and NO<sub>x</sub>.

*CSAPR SO<sub>2</sub> Group 1 Trading Program*—A multi-state SO<sub>2</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97, subpart CCCCC and 40 CFR 52.39(a), (b), (d)—(f), (j), and (k) (relating to CSAPR SO<sub>2</sub> Group 1 Trading Program; and what are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?), including a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.39(f), as a means of mitigating interstate transport of fine particulates and SO<sub>2</sub>.

*CSAPR SO<sub>2</sub> Group 2 Trading Program*—A multi-state SO<sub>2</sub> air pollution control and emission reduction program established in accordance with 40 CFR Part 97, subpart DDDDD (relating to CSAPR SO<sub>2</sub> group 2 trading program) and 40 CFR 52.39(a), (c), and (g)—(k), including a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO<sub>2</sub>.

*Decay rate*—The amount of a gas removed from the atmosphere over a number of years.

*Descending price, multiple-round auction*—An auction that starts with a high provisional price, which falls in each round by predetermined increments. In each round, a bidder can lock in the purchase of some number of CO<sub>2</sub> allowances at the current provisional price and wait for the price to fall. Rounds continue so long as the number of CO<sub>2</sub> allowances locked-in is less than the quantity of CO<sub>2</sub> allowances offered for sale.

*Discriminatory price, sealed-bid auction*—A single-round, sealed-bid auction in which a bidder may submit multiple bids for CO<sub>2</sub> allowances at different prices. The price paid by winning bidders with the highest bids for CO<sub>2</sub> allowances is their own bid price.



*Electronic submission agent*—The person who is delegated authority by a CO<sub>2</sub> authorized account representative or a CO<sub>2</sub> authorized alternate account representative to make an electronic submission to the Department or its agent under this subchapter.

*Eligible biomass*—

(i) Sustainably harvested woody and herbaceous fuel sources that are available on a renewable or recurring basis, including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, unadulterated wood and wood residues, animal wastes, other clean organic wastes not mixed with other solid wastes, biogas and other neat liquid biofuels derived from these fuel sources.

(ii) This term does not include old growth timber.

*Excess emissions*—The amount of CO<sub>2</sub> emissions, in tons, emitted by a CO<sub>2</sub> budget source during a control period or the initial control period that exceeds the CO<sub>2</sub> budget emissions limitation for the source.

*Excess interim emissions*—The amount of CO<sub>2</sub> emissions, in tons, emitted by a CO<sub>2</sub> budget source during an interim control period multiplied by 0.50 that exceeds the CO<sub>2</sub> budget emissions limitation for the source.

*General account*—A COATS account established by the Department under § 145.351 that is not a compliance account.

*GWP—Global Warming Potential*—

(i) A measure of the radiative efficiency or 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 relative to that of CO<sub>2</sub>.

(ii) GWPs used in this subchapter are consistent with the values used in the Intergovernmental Panel on Climate Change, Fifth Assessment Report.

*Gross generation*—The electrical output in MWe at the terminals of the generator.

*Initial control period*—The calendar-year period from January 1, 2022, through December 31, 2023, inclusive, which is the second and third year of the fifth control period and the initial 2 years of Pennsylvania's participation in the CO<sub>2</sub> Budget Trading Program.

*Interim control period*—A one-calendar-year time period, during each of the first and second calendar years of each control period. The first interim control period starts on January 1, 2024 and ends on December 31, 2024, inclusive. The second interim control period starts on January 1, 2025 and ends on December 31, 2025, inclusive. Each successive three-year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

*Legacy emissions*—The amount of CO<sub>2</sub> emissions in tons equal to the highest calendar year of emissions from the 3-year period beginning January 1, 2017 through December 31, 2019, as determined by the Department.

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

(i) The life of the unit.

(ii) A cumulative term of no less than 30 years, including a contract that permits an election for early termination.

(iii) A period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

*Maximum potential hourly heat input*—An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use 40 CFR Part 75, Appendix D (relating to optional SO<sub>2</sub> emissions data protocol for gas-fired and oil-fired units) to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO<sub>2</sub> concentration in percent CO<sub>2</sub> or the minimum O<sub>2</sub> concentration in percent O<sub>2</sub>.

*Minimum reserve price*—The price for calendar year 2020 is \$2.32. 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.

*Monitoring system*—A monitoring system that meets the requirements of this subchapter, including a CEMS, an excepted monitoring system or an alternative monitoring system.

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

*Net-electric output*—The amount of gross generation a generator produces, including, but not limited to, output from a steam turbine, combustion turbine and gas expander, as measured at the generator terminals, less the electricity used to operate the plant (that is, auxiliary loads); the uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs and transformer losses as measured at the transmission side of the step up transformer.

**Notice of CO<sub>2</sub> allowance auction**—The notification for a specific auction or auctions issued under § 145.405.

*Operator*—A person who operates, controls or supervises a CO<sub>2</sub> budget unit or a CO<sub>2</sub> budget source and shall include, but not be limited to, a holding company, utility system or plant manager of the unit or source.

*Owner*—Any of the following persons:

(i) A holder of any portion of the legal or equitable title in a CO<sub>2</sub> budget unit or a CO<sub>2</sub> budget source.

(ii) A holder of a leasehold interest in a CO<sub>2</sub> budget unit or a CO<sub>2</sub> budget source, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO<sub>2</sub> budget unit.

(iii) A purchaser of power from a CO<sub>2</sub> budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit.

(iv) With respect to any general account, a person who has an ownership interest with respect to the CO<sub>2</sub> allowances held in the general account and who is subject to the binding agreement for the CO<sub>2</sub> authorized account representative to represent that person's ownership interest with respect to CO<sub>2</sub> allowances.

*Participating state*—A state that has established a corresponding regulation as part of the CO<sub>2</sub> Budget Trading Program.

*Pennsylvania CO<sub>2</sub> Budget Trading Program adjusted budget*—The annual amount of CO<sub>2</sub> tons available in Pennsylvania for allocation in a given allocation year, in accordance with the CO<sub>2</sub> Budget Trading Program, determined in accordance with § 145.342. CO<sub>2</sub> offset allowances allocated to project sponsors and 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 Pennsylvania CO<sub>2</sub> Budget Trading Program adjusted budget.

*Pennsylvania CO<sub>2</sub> Budget Trading Program base budget*—The annual number of CO<sub>2</sub> tons available in Pennsylvania for allocation in a given allocation year, in accordance with the CO<sub>2</sub> Budget Trading Program and as specified in § 145.341. CO<sub>2</sub> offset allowances allocated to project sponsors and 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 Pennsylvania CO<sub>2</sub> Budget Trading Program base budget.

**Qualified participant**—A person who has submitted a qualification application under § 145.408(a) and that the Department determines to be qualified to participate in CO<sub>2</sub> allowance auctions pursuant to § 145.408(e).

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

*Recordation, record or recorded*—With regard to CO<sub>2</sub> allowances, the movement of CO<sub>2</sub> allowances by the Department or its agent from one COATS account to another, for purposes of allocation, transfer or deduction.

*Reserve price*—The minimum acceptable price for each CO<sub>2</sub> allowance offered for sale in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in § 145.382.

*Reviewer*—The individual who is delegated authority by a CO<sub>2</sub> authorized account representative or a CO<sub>2</sub> authorized alternate account representative to review information in COATS under this subchapter.

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

*State*—One of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

*Ton or tonnage*—A short ton that is 2,000 pounds or 0.9072 metric tons.

*Undistributed CO<sub>2</sub> allowances*—CO<sub>2</sub> allowances originally allocated to a set aside account as pursuant to § 145.342 that were not distributed.

*Uniform-price, sealed-bid auction*—A single-round, sealed-bid auction in which a bidder may submit multiple bids at different prices. The price paid by all successful bidders will be uniform and equal to the highest rejected bid price.

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

*Unit operating day*—A calendar day in which a unit combusts any fuel.

*Unsold CO<sub>2</sub> allowances*—A CO<sub>2</sub> allowance that has been made available for sale in an auction conducted by the Department or its agent, but not sold.

*Waste coal*—The coal disposed or abandoned prior to July 31, 1982 or disposed of thereafter in a permitted coal refuse disposal site regardless of when disposed of and used to generate electricity.

*Waste coal-fired*—The combustion of waste coal or, if in combination with any other fuel, waste coal comprises 75% or greater of the annual heat input on a Btu basis. Facilities combusting waste coal shall use at a minimum a circulating fluidized bed boiler and be outfitted with a limestone injection system and a fabric filter particulate removal system.

*Waste coal set-aside account*—A general account established by the Department for the allocation of CO<sub>2</sub> allowances for retirement in an amount sufficient to provide allowances equal to the legacy emissions from all waste coal-fired units pursuant to § 145.342(i).

### **§ 145.303. Measurements, abbreviations and acronyms.**

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

*CH<sub>4</sub>*—Methane.

*hr*—Hour.

*lb*—Pounds.

*MMBtu*—Million Btu.

*MW*—megawatt.

*MWe*—megawatt electrical.

### **§ 145.304. Applicability.**

(a) *CO<sub>2</sub> budget units*. Beginning *blank* (*Editor's Note*: The blank refers to the effective date of this rulemaking, when published as a final-form rulemaking.), this subchapter applies to an owner or operator of a unit that, at any time on or after January 1, 2005, served or serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe.

(b) *CO<sub>2</sub> budget sources*. Any source that includes one or more CO<sub>2</sub> budget unit shall be a CO<sub>2</sub> budget source, subject to the requirements of this subchapter.

### **§ 145.305. Limited exemption for CO<sub>2</sub> budget units with electrical output to the electric grid restricted by permit conditions.**

(a) *Exemption*. Notwithstanding § 145.304, a CO<sub>2</sub> budget source that has a permit issued by the Department containing a condition restricting the supply of the CO<sub>2</sub> budget unit's annual electrical output to the electric grid to no more than 10 percent of the annual gross generation of the unit, or restricting the supply less than or equal to 15% of its annual total useful energy to any entity other than the manufacturing facility to which the CO<sub>2</sub> budget source is interconnected and which complies with subsection (c), shall be exempt from the requirements of this subchapter, except for the provisions of this section, § 145.302, § 145.303, § 145.304, § 145.307 and, if

applicable because of the allocation of CO<sub>2</sub> allowances during the pre-exemption time period, § 145.341, § 145.351 and § 145.361.

(b) *Effective date.* The exemption under subsection (a) shall become effective as of the January 1 on or after the date on which the restriction on the percentage of annual gross generation that may be supplied to the electric grid and the provisions in the permit required under subsection (a) become final.

(c) *Compliance.*

(1) The owner or operator of a CO<sub>2</sub> budget unit exempt under subsection (a) shall comply with the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in subsection (a).

(2) The owner or operator of a CO<sub>2</sub> budget unit exempt under subsection (a) shall report to the Department, in accordance with the applicable provisions under § 145.378 (relating to additional requirements to provide output data), the amount of annual gross generation and the amount of annual gross generation supplied to the electric grid during the year by the following March 1.

(3) For a period of 10 years from the date the records are created, the owner or operator of a CO<sub>2</sub> budget unit exempt under subsection (a) shall retain, at the source that includes the unit, records demonstrating that the conditions of the permit under subsection (a) were met. The Department may, in writing, extend the 10-year period for keeping records, at any time prior to the end of the period. The owner or operator bears the burden of proof that the unit met the restriction on the percentage of annual gross generation that may be supplied to the electric grid.

(4) The owner or operator and, to the extent applicable, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit exempt under subsection (a) shall comply with the requirements of this subchapter concerning all time periods for which the exemption is not in effect, even if the requirements arise, or must be complied with, after the exemption takes effect.

(5) A CO<sub>2</sub> budget unit exempt under subsection (a) will lose its exemption, on the earlier of the following dates:

(i) The restriction on the percentage of annual gross generation that may be supplied to the electric grid described in subsection (a) is removed from the unit's permit or otherwise becomes no longer applicable in any year that commences on or after January 1, 2022.

(ii) The unit fails to comply or the owner or operator fails to meet their burden of proving that the unit is complying with the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in subsection (a) during any year that commences on or after January 1, 2022.

(6) A unit that loses its exemption in accordance with paragraph (c)(5) shall be subject to the requirements of this subchapter. For the purposes of this subchapter, the unit shall be treated as

commencing operation on the date the unit loses its exemption.

**§ 145.306. General requirements.**

**(a) Permit requirements.**

(1) The owner or operator of each CO<sub>2</sub> budget source shall have a CO<sub>2</sub> budget permit condition in their permit required under Chapter 127 and shall submit to the Department the following:

(i) A complete application for a new, renewed or modified permit under § 145.323 in accordance with the deadlines specified in § 145.322.

(ii) Any supplemental information that the Department determines is necessary to review the permit application and issue or deny a permit, permit renewal or permit modification that includes CO<sub>2</sub> Budget Trading Program requirements.

(2) The owner or operator of each CO<sub>2</sub> budget source required to have a permit pursuant to Chapter 127 shall ensure that the permit incorporates the requirements of the CO<sub>2</sub> Budget Trading Program and shall operate the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source in compliance with the permit.

**(b) Monitoring requirements.**

(1) The owner or operator and, to the extent applicable, the CO<sub>2</sub> authorized account representative of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source, shall comply with the monitoring requirements of §§ 145.371—145.378 (relating to monitoring, reporting and recordkeeping requirements).

(2) The Department will use the emissions measurements recorded and reported in accordance with §§ 145.371—145.378 to determine the unit's compliance with the CO<sub>2</sub> requirements under subsection (c).

(c) *CO<sub>2</sub> requirements.* A CO<sub>2</sub> budget unit shall be subject to the CO<sub>2</sub> requirements starting on January 1, 2022 or the date on which the unit commences operation, whichever is later.

(1) For the purpose of determining compliance with paragraph (c)(2), total tons for a control period, the initial control period or an interim control period shall be calculated as the sum of all recorded hourly emissions or the tonnage equivalent of the recorded hourly emissions rates, in accordance with §§ 145.371—145.378. The Department will round total CO<sub>2</sub> emissions to the nearest whole ton, so that any fraction of a ton equal to or greater than 0.50 tons is deemed to equal 1 ton and any fraction of a ton less than 0.50 tons is deemed to equal zero tons.

(2) The owner or operator of each CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall, as of the CO<sub>2</sub> allowance transfer deadline, hold CO<sub>2</sub> allowances available for compliance deductions under § 145.355, in the source's compliance account, as follows:

(i) For the initial control period, the amount of CO<sub>2</sub> allowances held shall be no less than an amount equivalent to the total CO<sub>2</sub> emissions for the initial control period from all CO<sub>2</sub> budget units at the source.

(ii) For a control period, the amount of CO<sub>2</sub> allowances held shall be no less than the total CO<sub>2</sub> emissions for the control period from all CO<sub>2</sub> budget units at the source, less the CO<sub>2</sub> allowances deducted to meet the requirements of subparagraph (c)(2)(iii), with respect to the previous two interim control periods, as determined in accordance with §§ 145.351–145.358 and §§ 145.371–145.378.

(iii) For an interim control period, the amount of CO<sub>2</sub> allowances held shall be no less than the total CO<sub>2</sub> emissions for the interim control period from all CO<sub>2</sub> budget units at the source multiplied by 0.50, as determined in accordance with §§ 145.351–145.358 and §§ 145.371–145.378.

(3) Each ton of CO<sub>2</sub> emitted in excess of the CO<sub>2</sub> budget emissions limitation for a control period or the initial control period shall constitute a separate violation of this subchapter and the act.

(4) Each ton of excess interim emissions shall constitute a separate violation of this subchapter and the act.

(5) CO<sub>2</sub> allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with §§ 145.341–145.343, 145.351–145.358, and 145.361–145.363 and 145.397.

(6) A CO<sub>2</sub> allowance shall not be deducted, in order to comply with the requirements under subsection (c), for a control period or interim control period that ends prior to the year for which the CO<sub>2</sub> allowance was allocated.

(7) A CO<sub>2</sub> offset allowance shall not be deducted, in order to comply with the requirements under subsection (c), beyond the applicable percent limitations in § 145.355(a)(3).

(8) A CO<sub>2</sub> allowance is a limited authorization by the Department or a participating state to emit 1 ton of CO<sub>2</sub> in accordance with the CO<sub>2</sub> Budget Trading Program. No provision of the CO<sub>2</sub> Budget Trading Program, this subchapter, an application for a new, renewed or modified permit to incorporate the requirements of the CO<sub>2</sub> Budget Trading Program, a permit that includes the requirements of the CO<sub>2</sub> Budget Trading Program, or any provision of law shall be construed to limit the authority of the Department or a participating state to terminate or limit the authorization.

(9) A CO<sub>2</sub> allowance under the CO<sub>2</sub> Budget Trading Program does not constitute a property right.

(d) *Excess emissions requirements.* The owner or operator of a CO<sub>2</sub> budget source that has excess emissions in any control period or the initial control period or excess interim emissions



for any interim control period shall do the following:

(1) Forfeit the CO<sub>2</sub> allowances required for deduction under § 145.355(d)(1) and (d)(2).

(2) Pay any fine, penalty or assessment or comply with any other remedy imposed under § 145.355(d)(3).

(e) *Recordkeeping and reporting requirements.*

(1) Except as provided in subparagraph (1)(i), the owner or operator of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall maintain at a central location and provide upon request by the Department the following documents for 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the Department.

(i) The account certificate of representation for the CO<sub>2</sub> authorized account representative for the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with § 145.314 (relating to account certificate of representation). The certificate and documents shall be retained beyond the 10-year period until the documents are superseded because of the submission of a new account certificate of representation changing the CO<sub>2</sub> authorized account representative.

(ii) The emissions monitoring information, in accordance with §§ 145.371—145.378 and 40 CFR 75.57.

(iii) Copies of all reports, compliance certifications and other submissions and all records made or required under the CO<sub>2</sub> Budget Trading Program.

(iv) Copies of the documents used to complete an application for a new or modified permit that incorporates the requirements of the CO<sub>2</sub> Budget Trading Program and any submission under the CO<sub>2</sub> Budget Trading Program or to demonstrate compliance with the requirements of the CO<sub>2</sub> Budget Trading Program.

(2) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source shall submit the reports and compliance certifications required under this subchapter, including the requirements under §§ 145.331—145.332.

(f) *Liability.*

(1) Except as provided under § 127.403 (relating to permitting of sources operating lawfully without a permit), a permit revision may not excuse any violation of the requirements of this subchapter that occurs prior to the date that the revision takes effect.

(2) Any provision of this subchapter that applies to a CO<sub>2</sub> authorized account representative shall apply to the owner or operator of the source and of the CO<sub>2</sub> budget units at the source.

(3) Any provision of this subchapter that applies to a CO<sub>2</sub> budget source shall also apply to the owner or operator of the source and of the CO<sub>2</sub> budget units at the source.

(4) Any provision of this subchapter that applies to a CO<sub>2</sub> budget unit shall also apply to the owner or operator of the unit.

(g) *Effect on other authorities.* No provision of this subchapter, a permit application or a permit shall be construed as exempting or excluding the owner or operator and, to the extent applicable, the CO<sub>2</sub> authorized account representative, from compliance with any provision of the act, the CAA, or the regulations promulgated under the CAA or the act.

**§ 145.307. Computation of time.**

(a) Unless otherwise stated, any time period scheduled, under the CO<sub>2</sub> Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CO<sub>2</sub> Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CO<sub>2</sub> Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

**CO<sub>2</sub> Authorized Account Representative for a CO<sub>2</sub> Budget Source**

Sec.

- 145.311. Authorization and responsibilities of the CO<sub>2</sub> authorized account representative.
- 145.312. CO<sub>2</sub> authorized alternate account representative.
- 145.313. Changing the CO<sub>2</sub> authorized account representative and the CO<sub>2</sub> authorized alternate account representative; changes in the owners and operators.
- 145.314. Account certificate of representation.
- 145.315. Objections concerning the CO<sub>2</sub> authorized account representative.
- 145.316. Delegation of authority to make electronic submissions and review information in COATS.

**§ 145.311. Authorization and responsibilities of the CO<sub>2</sub> authorized account representative.**

(a) Except as provided under § 145.312, each CO<sub>2</sub> budget source, including all CO<sub>2</sub> budget units at the source, shall have only one CO<sub>2</sub> authorized account representative, with regard to all matters under the CO<sub>2</sub> Budget Trading Program concerning the source or any CO<sub>2</sub> budget unit at the source.

(b) The CO<sub>2</sub> authorized account representative of the CO<sub>2</sub> budget source shall be selected by an agreement binding on the owner or operator of the source and all CO<sub>2</sub> budget units at the source and must act in accordance with the certificate of representation under § 145.314.

(c) Upon receipt by the Department or its agent of a complete account certificate of representation under § 145.314, the CO<sub>2</sub> authorized account representative of the source shall represent and, by their representations, actions, inactions or submissions, legally bind each owner and operator of the CO<sub>2</sub> budget source represented and each CO<sub>2</sub> budget unit at the source in all matters pertaining to the CO<sub>2</sub> Budget Trading Program, notwithstanding any agreement between the CO<sub>2</sub> authorized account representative and the owner or operator. The owner or operator shall be bound by any decision or order issued to the CO<sub>2</sub> authorized account representative by the Department or a court regarding the source or unit.

(d) The Department will issue a permit that incorporates the requirements of the CO<sub>2</sub> Budget Trading Program and establish a COATS account for a CO<sub>2</sub> budget source only after the Department or its agent has received a complete account certificate of representation under § 145.314 for a CO<sub>2</sub> authorized account representative of the source and the CO<sub>2</sub> budget units at the source.

(e) Each submission under the CO<sub>2</sub> Budget Trading Program shall be submitted, signed and certified by the CO<sub>2</sub> authorized account representative for each CO<sub>2</sub> budget source on behalf of which the submission is made. Each submission shall include the following certification statement by the CO<sub>2</sub> authorized account representative:

“I am authorized to make this submission on behalf of the owner or operator of the CO<sub>2</sub> budget sources or CO<sub>2</sub> budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(f) The Department or its agent will accept or act on a submission made on behalf of the owner or operator of a CO<sub>2</sub> budget source or a CO<sub>2</sub> budget unit only if the submission has been made, signed and certified in accordance with subsection (e).

**§ 145.312. CO<sub>2</sub> authorized alternate account representative.**

(a) An account certificate of representation may designate 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.

(b) Upon receipt by the Department or its agent of a complete account certificate of representation under § 145.314, 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 §§ 145.311(a), 145.313, 145.314 and 145.352, whenever the term “CO<sub>2</sub> authorized account representative” is used in this subchapter, the term shall include the CO<sub>2</sub> authorized alternate account representative.

**§ 145.313. Changing the CO<sub>2</sub> authorized account representative and the CO<sub>2</sub> authorized alternate account representative; changes in the owner or operator.**

(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 Department or its agent of a superseding complete account certificate of representation under § 145.314. Notwithstanding a change, the representations, actions, inactions and submissions by the previous CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative prior to the time and date when the Department or its agent receives the superseding account certificate of representation shall be binding on the new CO<sub>2</sub> authorized account representative and the owner or operator of the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source.

(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 Department or its agent of a superseding complete account certificate of representation under § 145.314. Notwithstanding a change, the representations, actions, inactions and submissions by the previous CO<sub>2</sub> authorized alternate account representative prior to the time and date when the Department or its agent receives the superseding account certificate of representation shall be binding on the new CO<sub>2</sub> authorized alternate account representative and the owner or operator of the CO<sub>2</sub> budget source and the CO<sub>2</sub> budget units at the source.

(c) *Changes in the owner or operator.*

(1) If a new owner or operator of a CO<sub>2</sub> budget source or a CO<sub>2</sub> budget unit is not included in the list of owners and operators submitted in the account certificate of representation, the 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 source or unit, and the decisions, orders, actions and inactions of the Department, as if the new owner or operator were included in the list.

(2) Within 30 days following any change in the owner or operator of a CO<sub>2</sub> budget source or a CO<sub>2</sub> budget unit, 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.

**§ 145.314. Account certificate of representation.**

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

(1) Identification of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source for which the account certificate of representation is submitted.

(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 CO<sub>2</sub> budget source and of each CO<sub>2</sub> budget unit at the source.

(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 owner or operator of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO<sub>2</sub> Budget Trading Program on behalf of the owner or operator of the CO<sub>2</sub> budget source and of each CO<sub>2</sub> budget unit at the source and that each owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department or a court regarding the source or unit.”

(5) The signature of the 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 Department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or its agent. The Department and its agent are not under any obligation to review or evaluate the sufficiency of documents of agreement, if submitted.

**§ 145.315. Objections concerning the CO<sub>2</sub> authorized account representative.**

(a) Once a complete account certificate of representation under § 145.404 has been submitted and received, the Department and its agent will rely on the account certificate of representation unless the Department or its agent receives a superseding complete account certificate of representation under § 145.314.

(b) Except as provided in § 145.313(a) or (b), an objection or other communication submitted to the Department or its agent concerning the authorization, or any representation, action, inaction or submission of the CO<sub>2</sub> authorized account representative will not affect any representation,

action, inaction or submission of the CO<sub>2</sub> authorized account representative or the finality of a decision or order by the Department or its agent under the CO<sub>2</sub> Budget Trading Program.

(c) The Department and its agent will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction or submission of a CO<sub>2</sub> authorized account representative, including private legal disputes concerning the proceeds of CO<sub>2</sub> allowance transfers.

**§ 145.316. Delegation of authority to make electronic submissions and review information in COATS.**

(a) A CO<sub>2</sub> authorized account representative or a CO<sub>2</sub> authorized alternate account representative may delegate, to one or more persons, their authority to make an electronic submission to the Department or its agent under this subchapter.

(b) In order to delegate authority to make an electronic submission to the Department or its agent, the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative must submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following:

(1) The name, address, e-mail address and telephone number of the delegating 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 electronic submission agent.

(3) For each electronic submission agent, a list of the type of electronic submissions under subsection (a) for which authority is delegated.

(4) The following certification statements by the delegating 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 Department or its agent that is by the electronic submission agent identified in this notice of delegation and of a type listed for the 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 and before this notice of delegation is superseded by another notice of delegation under subsection (d) shall be deemed to be an electronic submission by me."

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

(c) A notice of delegation submitted under subsection (b) will be effective, with regard to the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative

identified in the notice, upon receipt of the notice by the Department or its agent and until receipt by the Department or its agent of a superseding notice of delegation by the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative. 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.

(d) Any electronic submission covered by the certification under subparagraph (b)(4) and made in accordance with a notice of delegation effective under subsection (b) 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 the notice of delegation.

(e) A CO<sub>2</sub> authorized account representative or a CO<sub>2</sub> authorized alternate account representative may delegate, to one or more persons, their authority to review information in COATS under this subchapter.

(f) In order to delegate authority to review information in COATS under subsection (e), the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative must submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following:

(1) The name, address, e-mail address and telephone number of the delegating 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 reviewer.

(3) For each reviewer, a list of the type of information under subsection (e) for which authority is delegated.

(4) The following certification statements by the delegating 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 the reviewer identified in this notice of delegation and of a type listed for the information accessible by the reviewer 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 and before this notice of delegation is superseded by another notice of delegation under subsection (g) shall be deemed to be a review by me."

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

(g) A notice of delegation submitted under subsection (f) 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 the notice, upon receipt of the notice by the Department or its agent and until receipt by the Department or its agent of a superseding notice of delegation

by the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative. The superseding notice of delegation may replace any previously identified reviewer, add a new reviewer or eliminate entirely any delegation of authority.

### Permits

Sec.

- § 145.321. General requirements for a permit incorporating CO<sub>2</sub> Budget Trading Program requirements.
- § 145.322. Submission of an application for a new, renewed or modified permit incorporating CO<sub>2</sub> Budget Trading Program requirements.
- § 145.323. Contents of an application for a permit incorporating CO<sub>2</sub> Budget Trading Program requirements.

#### **§ 145.321. General requirements for a permit incorporating CO<sub>2</sub> Budget Trading Program requirements.**

(a) Except as provided under § 127.403, each CO<sub>2</sub> budget source must have a permit issued by the Department pursuant to Chapter 127.

(b) The permit for each CO<sub>2</sub> budget source shall contain all applicable CO<sub>2</sub> Budget Trading Program requirements.

#### **§ 145.322. Submission of an application for a new, renewed or modified permit incorporating CO<sub>2</sub> Budget Trading Program requirements.**

(a) For any CO<sub>2</sub> budget source, the CO<sub>2</sub> authorized account representative shall submit a complete permit application under Chapter 127 incorporating the CO<sub>2</sub> Budget Trading Program requirements in this subchapter to the Department by the later of the following:

(1) 6 months after *blank* (*Editor's Note: The blank refers to the effective date of this rulemaking, when published as a final-form rulemaking.*)

(2) 12 months before the date on which the CO<sub>2</sub> budget source, or a new unit at the source, commences operation.

(b) If the Department approves the incorporation of CO<sub>2</sub> Budget Trading Program requirements into a permit, the Department will establish permit conditions in the permit that will enable the Department to readily verify whether emissions from the source operations meet the requirements of this subchapter. Such permit conditions will set forth replicable procedures, including monitoring, source emissions testing, recordkeeping and reporting procedures, sufficient to ensure that emissions are quantified and recorded and that compliance with the emissions limitation under this subchapter is enforceable.

#### **§ 145.323. Contents of an application for a permit incorporating CO<sub>2</sub> Budget Trading Program requirements.**



A complete permit application shall include the following concerning the CO<sub>2</sub> budget source for which the application is submitted, in a format prescribed by the Department:

- (1) Identification of the CO<sub>2</sub> budget source, including plant name and the Office of Regulatory Information Systems or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable.
- (2) Identification of each CO<sub>2</sub> budget unit at the CO<sub>2</sub> budget source.
- (3) The standard requirements under § 145.306.
- (4) The compliance certification requirements under § 145.331.
- (5) The compliance requirements under § 145.355.
- (6) The monitoring, recordkeeping and reporting requirements under §§ 145.371—145.378.

### **Compliance Certification**

Sec.

- § 145.331. Compliance certification report.  
§ 145.332. Department's action on compliance certifications.

#### **§ 145.331. Compliance certification report.**

(a) *Applicability and deadline.* For each control period, except for an interim control period, in which a CO<sub>2</sub> budget source is subject to the CO<sub>2</sub> requirements of § 145.306(c), the CO<sub>2</sub> authorized account representative of the source shall submit to the Department by March 1 of that year, a compliance certification report.

(b) *Contents of report.* The CO<sub>2</sub> authorized account representative shall include in the compliance certification report under subsection (a) the following:

- (1) Identification of the CO<sub>2</sub> budget source and each CO<sub>2</sub> budget unit at the source.
- (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 source's compliance account under § 145.355 for the control period, the initial control period or an interim control period, including the serial numbers of any CO<sub>2</sub> offset allowances that are to be deducted subject to the limitations of § 145.355(a)(3).
- (3) The compliance certification under subsection (c).

(c) *Compliance certification.* In the compliance certification report under subsection (a), the CO<sub>2</sub> authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO<sub>2</sub> budget units at the source in compliance with the CO<sub>2</sub> Budget Trading Program, whether the source and each CO<sub>2</sub> budget unit

at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO<sub>2</sub> Budget Trading Program, including the following:

(1) Whether the CO<sub>2</sub> budget source was operated in compliance with the CO<sub>2</sub> requirements of § 145.305(c).

(2) Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit and contains the information necessary to attribute CO<sub>2</sub> emissions to the unit, in accordance with §§ 145.371—145.378.

(3) Whether all the CO<sub>2</sub> emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with §§ 145.371—145.378. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made.

(4) Whether the facts that form the basis for certification under §§ 145.371—145.378 of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under §§ 145.371—145.378, if any, have changed.

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

**§ 145.332. Department's action on compliance certifications.**

(a) The Department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO<sub>2</sub> Budget Trading Program and make appropriate adjustments of the information in the compliance certification or other submission.

(b) The Department or its agent may deduct CO<sub>2</sub> allowances from or transfer CO<sub>2</sub> allowances to a CO<sub>2</sub> budget source's compliance account based on the information in the compliance certification or other submission, as adjusted under subsection (a).

**CO<sub>2</sub> Allowance Allocations**

Sec.

§ 145.341. Pennsylvania CO<sub>2</sub> budget trading program base budget.

§ 145.342. CO<sub>2</sub> allowance allocations.

§ 145.343. Distribution of CO<sub>2</sub> allowances in the air pollution reduction account.

**§ 145.341. Pennsylvania CO<sub>2</sub> budget trading program base budget.**

- (a) For 2022, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (b) For 2023, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (c) For 2024, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (d) For 2025, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (e) For 2026, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (f) For 2027, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (g) For 2028, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (h) For 2029, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.
- (i) For 2030 and each succeeding calendar year, the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget is \_ tons.

**§ 145.342. CO<sub>2</sub> allowance allocations.**

(a) *General allocations.* The Department will allocate CO<sub>2</sub> allowances representing 100 percent of the tons for each allocation year from the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget set forth in § 145.341 to an air pollution reduction account, less those allowances set aside each allocation year pursuant to subsection (b).

(b) *Waste coal set-aside account.* The Department will allocate CO<sub>2</sub> allowances to a waste coal set-aside account for each allocation year from the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget set forth in § 145.341 in an amount sufficient to provide allowances equal to the total amount of legacy emissions from all waste coal-fired units located in Pennsylvania, as provided under subsection (i).

(c) *CO<sub>2</sub> allowances available for allocation.* For the allocation year 2022 and each succeeding calendar year, the Pennsylvania CO<sub>2</sub> Budget Trading Program adjusted 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. In any year in which there is no adjusted budget, the adjusted budget shall equal the base budget.

(d) *Cost Containment Reserve (CCR) allocation.* To contain the cost of CO<sub>2</sub> allowances, the Department will allocate CO<sub>2</sub> CCR allowances, separate from and additional to the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget set forth in § 145.341, to the air pollution reduction account. The Department will allocate CO<sub>2</sub> CCR allowances by doing the following:

- (1) The Department will initially allocate CCR allowances for calendar year 2022 in an

amount equal to 10 percent of the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget for 2022 set forth in § 145.341(a).

(2) On or before January 1, 2023, and on or before January 1 of each calendar year thereafter, the Department will allocate current vintage year CCR allowances equal to 10 percent of the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget for the calendar year and withdraw the number of CO<sub>2</sub> CCR allowances that remain in the air pollutant reduction account at the end of the prior calendar year.

(e) *Emissions Containment Reserve (ECR) Withholding.* To provide additional emissions reductions in the event of lower than anticipated emissions reduction costs, the Department will convert and transfer any CO<sub>2</sub> allowances that have been withheld from any auction into the Pennsylvania ECR account. The Department will withhold CO<sub>2</sub> ECR allowances by doing the following:

(1) If the condition in § 145.382(d)(1) is met at an auction, then the maximum number of CO<sub>2</sub> ECR allowances that will be withheld from that auction will be equal to 10 percent of the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget for that calendar year 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 Pennsylvania ECR account.

(2) Allowances that have been transferred into the Pennsylvania ECR account will not be withdrawn.

(f) *Adjustment for banked allowances.* The Department will determine whether any adjustments for banked allowances will be made by using the following formula:

$$ABA = ((A - AE)/5) \times RS\%$$

Where:

ABA = The adjustment for banked allowances quantity in tons.

A (adjustment) = The total quantity of allowances of vintage years held in general and compliance accounts, including compliance accounts established pursuant to the CO<sub>2</sub> Budget Trading Program, but not including accounts opened by participating states, as reflected in COATS.

AE (adjustment emissions) = The total quantity of emissions from all CO<sub>2</sub> budget sources in all participating states, reported pursuant to the CO<sub>2</sub> Budget Trading Program as reflected in COATS prior to the year of the adjustment.

RS% = Pennsylvania's adjustment year budget divided by the adjustment year regional budget.

(g) *CO<sub>2</sub> Budget Trading Program adjusted budget*. The Department may establish the Pennsylvania CO<sub>2</sub> Budget Trading Program adjusted budget for the allocation year by the following formula:

$$AB = BB - ABA$$

Where:

AB = The Pennsylvania CO<sub>2</sub> Budget Trading Program adjusted budget.

BB = The Pennsylvania CO<sub>2</sub> Budget Trading Program base budget.

ABA = The adjustment for banked allowances quantity in tons.

(h) If the Department determines to adjust the budget for banked allowances under subsections (f) and (g), the Department will publish in the *Pennsylvania Bulletin* the CO<sub>2</sub> Budget Trading Program adjusted budget for the allocation year.

(i) *Waste coal set-aside allocation*. The waste coal set-aside allocation will consist of tons from the Pennsylvania CO<sub>2</sub> Budget Trading Program base budget set forth in § 145.341, as applicable. The Department will determine CO<sub>2</sub> allowance allocations in accordance with the following:

(1) *Applicability*. This subsection applies to waste coal-fired units located in Pennsylvania and built before XXX that are subject to the CO<sub>2</sub> Budget Trading Program requirements under § 145.304.

(2) *Initial allocation*. Within 60 days of *blank* (*Editor's Note: The blank refers to the effective date of this rulemaking, when published as a final-form rulemaking.*), the Department will open and manage a general account for the waste coal set-aside allocation and transfer a portion of the CO<sub>2</sub> allowances allocated to the air pollution reduction account to the waste coal set-aside account in an amount equal to legacy emissions from all waste coal-fired units.

(3) *Legacy emissions*. The Department has determined that legacy emissions are equal to 7,900,000 allowances.

(4) *Retirement or auction of allowances*. Within 60 days after January 1 of each calendar year, excluding the year of the initial allocation, the Department may retire the number of CO<sub>2</sub> allowances on behalf of each waste coal-fired unit equal to the actual emissions during the previous year in tons. If actual emissions are less than the legacy emissions, then the CO<sub>2</sub> allowances remaining in the waste coal set-aside account will be transferred to the air pollution reduction account and auctioned in equal installments during the next four auctions.

(5) *Exceedance of legacy emissions*. If the total actual CO<sub>2</sub> emissions from waste coal-fired units exceed the legacy emissions during any given year, the Department will account for the exceedance as follows:

(i) Within 60 days after January 1 of each calendar year, the Department will determine the difference between each unit's legacy emissions and the unit's actual emissions during the previous year.

(ii) The Department will establish a waste coal exceedance general account on behalf of each waste coal-fired unit that exceeded the unit's legacy emissions.

(iii) During the year following the exceedance, the waste coal-fired unit shall purchase the amount of CO<sub>2</sub> allowances equal to the amount of the exceedance determined by the Department in subparagraph (i)(5)(i).

(iv) Once a waste coal-fired unit purchases CO<sub>2</sub> allowances under subparagraph (i)(5)(iii), the unit must transfer the allowances to its waste coal exceedance general account by December 31 of the year following the exceedance. Within 60 days after January 1 of the following year, the Department will verify that each waste coal-fired unit transferred the correct amount of CO<sub>2</sub> allowances to its waste coal exceedance general account. The Department will then retire the amount of CO<sub>2</sub> allowances which covers the difference in emissions determined by the Department in subparagraph (i)(5)(i).

(6) *Subsequent allocation.* Within 60 days after January 1 of each calendar year, excluding the year of the initial allocation, the Department may transfer a portion of the CO<sub>2</sub> allowances allocated to the air pollution reduction account to the waste coal set-aside account equal to the lesser of the initial allocation or 150% of actual emissions in the prior calendar year.

(7) *Set-aside termination.* If no allowances are retired in any year due to the fact that there were no CO<sub>2</sub> emissions from waste coal-fired units subject to this subchapter, then the CO<sub>2</sub> allowances remaining in the waste coal set-aside account will be transferred to the air pollution reduction account and auctioned in equal installments during the next four auctions. No additional allowances will be allocated to the waste coal set-aside account and the Department will close the waste coal set-aside account, as well as the waste coal exceedance general accounts if any exist.

#### **§ 145.343. Distribution of CO<sub>2</sub> allowances in the air pollution reduction account.**

(a) The Department will make all CO<sub>2</sub> allowances for an allocation year that are held in the air pollution reduction account for that allocation year available for purchase or auction by no later than the December 31 of the calendar year that corresponds to that allocation year.

(b) The Department may retire undistributed or unsold CO<sub>2</sub> allowances at the end of each control period, including the initial control period.

### **CO<sub>2</sub> ALLOWANCE TRACKING SYSTEM**

Sec.

§ 145.351. CO<sub>2</sub> Allowance Tracking System (COATS) accounts.

§ 145.352. Establishment of accounts.

- § 145.353. COATS responsibilities of CO<sub>2</sub> authorized account representative and CO<sub>2</sub> authorized alternate account representative.
- § 145.354. Recordation of CO<sub>2</sub> allowance allocations.
- § 145.355. Compliance.
- § 145.356. Banking.
- § 145.357. Account error.
- § 145.358. Closing of general accounts.

**§ 145.351. CO<sub>2</sub> Allowance Tracking System (COATS) accounts.**

(a) *Nature and function of compliance accounts.* Consistent with § 145.352(a), the Department or its agent will establish one compliance account for each CO<sub>2</sub> budget source. Allocations of CO<sub>2</sub> allowances under §§ 145.341—145.343 and deductions or transfers of CO<sub>2</sub> allowances under § 145.332, § 145.355, § 145.357 or §§ 145.361—145.363 will be recorded in the compliance accounts.

(b) *Nature and function of general accounts.* Consistent with § 145.352(b), the Department or its agent will establish, upon request, a general account for any person. Transfers of CO<sub>2</sub> allowances under §§ 145.361—145.363 will be recorded in the general account.

**§ 145.352. Establishment of accounts.**

(a) *Compliance accounts.* Upon receipt of a complete account certificate of representation under § 145.314, the Department or its agent will establish a compliance account for each CO<sub>2</sub> budget source for which the account certificate of representation was submitted.

(b) *General accounts.*

(1) Any person may apply to open a general account for the purpose of holding and transferring CO<sub>2</sub> allowances by submitting a complete application for a general account to the Department or its agent that includes the following:

(i) The name, mailing 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) The organization name and type of organization.

(iii) A list of all persons 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 by an agreement that is binding on all persons 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 the CO<sub>2</sub> Budget Trading Program on behalf of all persons and that each person shall be fully bound by my representations, actions, inactions or submissions and by any order or decision issued to me by the Department or its agent or a court regarding the general account.”

(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.

(vi) Unless otherwise required by the Department or its agent, documents of agreement referred to in the application for a general account should not be submitted to the Department or its agent. The Department and its agent are not under any obligation to review or evaluate the sufficiency of any documents of agreement, if submitted.

*(2) Authorization of CO<sub>2</sub> authorized account representative.*

(i) Upon receipt by the Department or its agent of a complete application for a general account under paragraph (b)(1), the Department or its agent will establish a general account for the person for whom the application is submitted.

(ii) 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 their representations, actions, inactions or submissions, legally bind each person who has an ownership interest with respect to CO<sub>2</sub> allowances held in the general account in all matters pertaining to the CO<sub>2</sub> Budget Trading Program, notwithstanding an agreement between the CO<sub>2</sub> authorized account representative or any CO<sub>2</sub> authorized alternate account representative and the person. This person 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 Department or its agent or a court regarding the general account.

(iii) 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.

(iv) 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 persons having an ownership interest with respect to CO<sub>2</sub> allowances held in the general account. Each 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:

“I am authorized to make this submission on behalf of the persons 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 penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(v) The Department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed and certified in accordance with subparagraph (b)(2)(iv).

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

(i) The CO<sub>2</sub> authorized account representative or the CO<sub>2</sub> authorized alternate account representative for a general account may be changed at any time upon receipt by the Department or its agent of a superseding complete application for a general account under paragraph (b)(1). Notwithstanding a change, the 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 Department or its agent receives the superseding application for a general account shall be binding on the new CO<sub>2</sub> authorized account representative or the new CO<sub>2</sub> authorized alternate account representative and the persons with an ownership interest with respect to the CO<sub>2</sub> allowances in the general account.

(ii) A revision of ownership listing shall include the following:

(A) If a new person having an ownership interest with respect to CO<sub>2</sub> allowances in the general account is not included in the list of persons in the application for a general account, the new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions and submissions of the 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 Department or its agent, as if the new person were included in the list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CO<sub>2</sub> allowances in the general account, including the addition or deletion of persons, 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 persons 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 (b)(1) has been submitted and received, the Department or its agent will rely on the application until a superseding complete application for a general account under subparagraph (b)(3)(i) is received by the Department or its agent.

(ii) Except as provided in subparagraphs (b)(3)(i) and (ii), no objection or other communication submitted to the Department 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 will 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 Department or its agent under the CO<sub>2</sub> Budget Trading Program.

(iii) The Department or its agent will not adjudicate a 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 or a CO<sub>2</sub> authorized alternate account representative may delegate, to one or more persons, their authority to make an electronic submission to the Department or its agent under § 145.361.

(ii) In order to delegate authority to make an electronic submission to the Department or its agent in accordance with subparagraph (b)(5)(i), the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative must submit to the Department or its agent a notice of delegation, in a format prescribed by the Department that includes the following:

(A) The name, address, e-mail address and telephone number of the 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 electronic submission agent.

(C) For each electronic submission agent, a list of the type of electronic submissions under subparagraph (b)(5)(i) for which authority is delegated.

(D) The following certification statements by the delegating 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 Department or its agent that is by an electronic submission agent identified in this notice of delegation and of a type listed for the 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 before this notice of delegation is superseded by another notice of delegation under subparagraph (b)(5)(ii) shall be deemed to be an electronic submission by me."

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

(iii) A notice of delegation submitted under subparagraph (b)(5)(ii) shall be effective, with regard to the delegating CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative identified in the notice, upon receipt of the notice by the Department or its agent and until receipt by the Department or its agent of a superseding notice of delegation by the CO<sub>2</sub> authorized account representative or CO<sub>2</sub> authorized alternate account representative. 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.

(iv) Any electronic submission covered by the certification in clause (b)(5)(ii)(D) and made in accordance with a notice of delegation effective under subparagraph (b)(5)(ii) 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 the notice of delegation.

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

**§ 145.353. COATS responsibilities of CO<sub>2</sub> authorized account representative and CO<sub>2</sub> authorized alternate account representative.**

(a) *Establishment of account.* Following the establishment of a COATS account, the submissions to the Department or its agent pertaining to the account, including, but not limited to, 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 or CO<sub>2</sub> authorized alternate account representative for the account.

**§ 145.354. Recordation of CO<sub>2</sub> allowance allocations.**

(a) By January 1 of each calendar year, the Department or its agent will record the CO<sub>2</sub> allowances allocated for the air pollution reduction account under § 145.342(a).

(b) By January 1 of each calendar year, the Department or its agent will record the CO<sub>2</sub> allowances allocated for the waste coal set-aside account under § 145.342(b) for the year after the last year for which CO<sub>2</sub> allowances were previously allocated to the set-aside account.

(c) The Department or its agent will assign each CO<sub>2</sub> allowance a serial number that will include digits identifying the year for which the CO<sub>2</sub> allowance is allocated.

**§ 145.355. Compliance.**

(a) *Allowances available for compliance deduction.* The CO<sub>2</sub> allowances are available to be deducted for compliance with the CO<sub>2</sub> requirements under § 145.306(c) for a control period, initial control period or an interim control period only if the CO<sub>2</sub> allowances meet the following:

(1) The CO<sub>2</sub> allowances, other than CO<sub>2</sub> offset allowances, are allocated for a prior control period, the same control period, the initial control period or the interim control period for which the allowances will be deducted.

(2) The CO<sub>2</sub> allowances are held in the CO<sub>2</sub> budget source's compliance account as of the CO<sub>2</sub> allowance transfer deadline for that control period, the initial control period or the interim control period or are transferred into the compliance account by a CO<sub>2</sub> allowance transfer correctly submitted for recordation under § 145.361 by the CO<sub>2</sub> allowance transfer deadline for that control period, the initial control period or the interim control period.

(3) For CO<sub>2</sub> offset allowances, the number of CO<sub>2</sub> offset allowances available to be deducted in order for a CO<sub>2</sub> budget source to comply with the CO<sub>2</sub> requirements under § 145.306(c) for a control period, the initial control period or an interim control period may not exceed 3.3% of the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for that control period or the initial control period, or 3.3% of 0.50 times the CO<sub>2</sub> budget source's CO<sub>2</sub> emissions for an interim control period, as determined in accordance with §§ 145.351—145.358 and §§ 145.371—145.378.

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

(b) *Deductions for compliance.* Following the recordation, in accordance with § 145.362, of CO<sub>2</sub> allowance transfers submitted for recordation in the CO<sub>2</sub> budget source's compliance account by the CO<sub>2</sub> allowance transfer deadline for a control period, the initial control period or interim control period, the Department or its agent will deduct CO<sub>2</sub> allowances available under subsection (a) to cover the source's CO<sub>2</sub> emissions for the control period, the initial control period or interim control period, as follows:

(1) Until the amount of CO<sub>2</sub> allowances deducted equals the number of tons of total CO<sub>2</sub> emissions, or 0.50 times the number of tons of total CO<sub>2</sub> emissions for an interim control period, less any CO<sub>2</sub> emissions attributable to the burning of eligible biomass, determined in accordance with §§ 145.371—145.378, from all CO<sub>2</sub> budget units at the CO<sub>2</sub> budget source for the control period, the initial control period or interim control period.

(2) Until there are no more CO<sub>2</sub> allowances remaining in the compliance account that are available to be deducted under subsection (a), if there are insufficient CO<sub>2</sub> allowances to complete the deductions in paragraph (b)(1).

(c) *Allowance identification.*

(1) The CO<sub>2</sub> authorized account representative for a CO<sub>2</sub> budget source's compliance account may identify by serial number the CO<sub>2</sub> allowances to be deducted from the compliance account for emissions or excess emissions for a control period, the initial control period or an interim control period in accordance with subsection (b) or (d). The identification shall be made in the compliance certification report submitted in accordance with § 145.331.

(2) The Department or its agent will deduct CO<sub>2</sub> allowances for a control period, the initial control period or an interim control period from the CO<sub>2</sub> budget source'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 (c)(1), in the following order:

(i) CO<sub>2</sub> offset allowances subject to the relevant compliance deduction limitations under paragraph (a)(3) will be deducted in chronological order. 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 will be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(ii) CO<sub>2</sub> allowances, other than CO<sub>2</sub> offset allowances, that are available for deduction under subsection (a) will be deducted in chronological order. 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 will be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under subsection (b), the Department or its agent will deduct from the CO<sub>2</sub> budget source's compliance account a number of CO<sub>2</sub> allowances, equal to three times the number of the CO<sub>2</sub> budget source's excess emissions.

(2) If the compliance account does not contain sufficient CO<sub>2</sub> allowances to cover three times the number of the CO<sub>2</sub> budget source's excess emissions, the CO<sub>2</sub> budget source shall immediately transfer CO<sub>2</sub> allowances into its compliance account in an amount equal to three times the number of the CO<sub>2</sub> budget source's excess emissions. No CO<sub>2</sub> offset allowances may be deducted to account for the source's excess emissions.

(3) A CO<sub>2</sub> allowance deduction required under paragraph (d)(1) will not affect the liability of the owner or operator of the CO<sub>2</sub> budget source or the CO<sub>2</sub> budget units at the source for any fine, penalty or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or the act. The following guidelines will be followed by the Department in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a CO<sub>2</sub> budget source has excess emissions for a control period, the initial control period or an interim control period, each day in the control period, the initial control period or an interim control period constitutes a day of violation unless the owner or operator of the unit demonstrates that a lesser number of days should be considered.

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

(e) *Recordation.* The Department or its agent will record in the appropriate compliance account all deductions from the account pursuant to subsections (b) and (c) and (d).

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

(1) The Department may review and conduct independent audits concerning any submission under the CO<sub>2</sub> Budget Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Department may deduct CO<sub>2</sub> allowances from or transfer CO<sub>2</sub> allowances to a CO<sub>2</sub> budget source's compliance account based on information in the submissions, as adjusted under paragraph (f)(1).

**§ 145.356. Banking.**

A CO<sub>2</sub> allowance that is held in a compliance account or a general account will remain in the account until the CO<sub>2</sub> allowance is deducted or transferred under § 145.332, § 145.355, § 145.357 or §§ 145.361—145.363.

**§ 145.357. Account error.**

The Department or its agent may correct any error in a COATS account. Within 10 business days of making the correction, the Department or its agent will notify the CO<sub>2</sub> authorized account representative for the account.

**§ 145.358. Closing of general accounts.**

(a) The CO<sub>2</sub> authorized account representative of a general account may instruct the Department or its agent to close the account by submitting a statement requesting deletion of the account from COATS and by correctly submitting for recordation under § 145.361 a CO<sub>2</sub> allowance transfer of all CO<sub>2</sub> allowances in the account to one or more other COATS account.

(b) If a general account shows no activity for 1 year or more and does not contain any CO<sub>2</sub> allowances, the Department or its agent may notify the CO<sub>2</sub> authorized account representative for the account that the account will be closed in COATS following 30 business days after the notice is sent. The Department or its agent will close the account after the 30-day period unless before the end of the 30-day period the Department or its agent receives a correctly submitted transfer of CO<sub>2</sub> allowances into the account under § 145.361 or a statement submitted by the CO<sub>2</sub> authorized account representative requesting that the account should not be closed. The Department or its agent will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

**CO<sub>2</sub> Allowance Transfers**

Sec.

§ 145.361 Submission of CO<sub>2</sub> allowance transfers.

§ 145.362 Recordation.

§ 145.363 Notification.

**§ 145.361. 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 Department or its agent. The CO<sub>2</sub> allowance transfer shall include the following, in a format prescribed by the Department:

- (1) The numbers identifying the accounts of the transferor and transferee.
- (2) A specification by serial number of each CO<sub>2</sub> allowance to be transferred.
- (3) The printed name and signature of the CO<sub>2</sub> authorized account representative of the transferor account and the date signed.
- (4) The date of the completion of the last sale or purchase transaction for the CO<sub>2</sub> allowance, if any.
- (5) The purchase or sale price of the CO<sub>2</sub> allowance that is the subject of a sale or purchase transaction under paragraph (4).

**§ 145.362. Recordation.**

(a) Within 5 business days of receiving a CO<sub>2</sub> allowance transfer, except as provided in subsection (b), the Department or its agent will record a CO<sub>2</sub> allowance transfer by moving each CO<sub>2</sub> allowance from the account of the transferor to the account of the transferee as specified by the request, if the following are met:

- (1) The transfer is correctly submitted under § 145.361.
- (2) The account of the transferor includes each CO<sub>2</sub> allowance identified by serial number in the transfer.

(b) 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> allowance allocated for a control period, initial control period or interim control period prior to or the same as the control period, initial 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 in § 145.355(b).

(c) A CO<sub>2</sub> allowance transfer submitted for recordation that fails to meet the requirements of subsection (a) will not be recorded.

**§ 145.363. Notification.**

(a) *Notification of recordation.* Within 5 business days of recordation of a CO<sub>2</sub> allowance transfer under § 145.362, the Department or its agent will notify each party to the transfer. Notice will be given to the CO<sub>2</sub> authorized account representative of the account of the transferor and the CO<sub>2</sub> authorized account representative of the account of the transferee.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CO<sub>2</sub> allowance transfer that fails to meet the requirements of § 145.362(a), the Department or its agent will notify the CO<sub>2</sub> authorized account representative of the account of the transferor and the CO<sub>2</sub> authorized account representative of the account of the transferee of the following:

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

(c) *Resubmission.* Nothing in this section precludes the submission of a CO<sub>2</sub> allowance transfer for recordation following notification under subsection (b).

### **Monitoring, Reporting and Recordkeeping Requirements**

Sec.

§ 145.371	General monitoring requirements.
§ 145.372	Initial certification and recertification procedures.
§ 145.373	Out-of-control periods.
§ 145.374	Notifications.
§ 145.375	Recordkeeping and reporting.
§ 145.376	Petitions.
§ 145.377	CO <sub>2</sub> budget units that co-fire eligible biomass.
§ 145.378	Additional requirements to provide output data.

#### **§ 145.371. General monitoring requirements.**

(a) The owner or operator, and to the extent applicable, the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in this section and §§ 145.372—145.378 (relating to monitoring, reporting, and recordkeeping requirements) and all applicable sections of 40 CFR Part 75. Where referenced in §§ 145.371—145.378, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO<sub>2</sub> mass emissions under this subchapter. For purposes of complying with these requirements, the definitions in § 145.302 and in 40 CFR 72.2 (relating to definitions) apply, and the terms “affected unit,” “designated representative” and “continuous emissions monitoring system” in 40 CFR Part 75 shall be replaced by the terms “CO<sub>2</sub> budget unit,” “CO<sub>2</sub> authorized account representative” and “continuous emissions monitoring system,” respectively, as defined in § 145.302. For units not subject to an acid rain emissions limitation, the term “Administrator” in 40 CFR Part 75 shall be replaced with “the Administrator, Department or its agent.” The owner or operator of a unit that is not a CO<sub>2</sub> budget unit but that is monitored under 40 CFR 75.72(b)(2)(ii) shall comply with the monitoring, reporting and recordkeeping requirements for a CO<sub>2</sub> budget unit under this subchapter.

(1) *Requirements for installation, certification and data accounting.* The owner or operator of each CO<sub>2</sub> budget unit must meet the following:

- (i) Install all monitoring systems necessary to monitor CO<sub>2</sub> mass emissions in accordance



with 40 CFR Part 75, except for equation G-1. This includes all systems required to monitor CO<sub>2</sub> concentration, stack gas flow rate, O<sub>2</sub> concentration, heat input and fuel flow rate, in accordance with 40 CFR Part 75, Subpart H.

(ii) Successfully complete all certification tests required under § 145.372 (relating to initial certification and recertification procedures) and meet all other provisions of this subchapter and 40 CFR Part 75 applicable to the monitoring systems under subparagraph (a)(1)(i).

(iii) Record, report and quality-assure the data from the monitoring systems under subparagraph (a)(1)(i).

(2) *Compliance dates.* The owner or operator of a CO<sub>2</sub> budget unit shall meet the monitoring system certification and other requirements of paragraph (a)(1) and shall record, report and quality-assure data from the monitoring systems under subparagraph (a)(1)(i) according to the following schedule:

(i) Except for a CO<sub>2</sub> budget unit under paragraph (a)(2)(ii), a CO<sub>2</sub> budget unit that commences commercial operation before July 1, 2021, shall comply with this section and §§ 145.372—145.378 by January 1, 2022.

(ii) A CO<sub>2</sub> budget unit that commences commercial operation on or after July 1, 2021, shall comply with the requirements of this section and §§ 145.372—145.378 by the later of the following dates:

(A) January 1, 2022.

(B) The earlier of:

(I) Ninety-unit operating days after the date on which the unit commences commercial operation.

(II) One hundred-eighty calendar days after the date on which the unit commences commercial operation.

(iii) The owner or operator of a CO<sub>2</sub> budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under paragraph (a)(2)(i) or (a)(2)(ii) by the earlier of:

(A) Ninety-unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(B) One hundred-eighty calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(3) *Reporting data.*

(i) Except as provided in subparagraph (a)(3)(ii), the owner or operator of a CO<sub>2</sub> budget unit that does not meet the applicable compliance date set forth in paragraph (a)(2) for any monitoring system under subparagraph (a)(1)(i) shall, for each monitoring system, determine, record and report maximum potential, or as appropriate minimum potential, values for CO<sub>2</sub> concentration, CO<sub>2</sub> emissions rate, stack gas moisture content, fuel flow rate, heat input and any other parameter required to determine CO<sub>2</sub> mass emissions under 40 CFR 75.31(b)(2) or (c)(3), or 40 CFR Part 75, Appendix D, Section 2.4, as applicable.

(ii) The owner or operator of a CO<sub>2</sub> budget unit that does not meet the applicable compliance date set forth in subparagraph (a)(2)(iii) for any monitoring system under subparagraph (a)(1)(i) shall, for each monitoring system, determine, record and report substitute data using the applicable missing data procedures in 40 CFR Part 75, Subpart D or Appendix D, in lieu of the maximum potential, or as appropriate minimum potential, values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subparagraph (a)(2)(iii).

(A) A CO<sub>2</sub> budget unit subject to an acid rain emissions limitation that qualifies for the optional SO<sub>2</sub>, NO<sub>x</sub> and CO<sub>2</sub> emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and report emissions for the acid rain program using the calculations under 40 CFR 75.19, shall also use the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this subchapter.

(B) A CO<sub>2</sub> budget unit subject to an acid rain emissions limitation that does not qualify for the optional SO<sub>2</sub>, NO<sub>x</sub> and CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19, shall not use the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with this subchapter.

(C) A CO<sub>2</sub> budget unit not subject to an acid rain emissions limitation shall qualify for the optional CO<sub>2</sub> emissions calculation for LME units under 40 CFR 75.19, if the unit emits less than 100 tons of NO<sub>x</sub> annually and no more than 25 tons of SO<sub>2</sub> annually.

(4) *Prohibitions.*

(i) An owner or operator of a CO<sub>2</sub> budget unit may not use an alternative monitoring system, alternative reference method or another alternative for the required CEMS without having obtained prior written approval in accordance with § 145.376 (relating to petitions).

(ii) An owner or operator of a CO<sub>2</sub> budget unit may not operate the unit so as to discharge, or allow to be discharged, CO<sub>2</sub> emissions to the atmosphere without accounting for the emissions in accordance with the applicable provisions of this subchapter and 40 CFR Part 75.

(iii) An owner or operator of a CO<sub>2</sub> budget unit may not disrupt the CEMS, a portion thereof or another approved emissions monitoring method, and thereby avoid monitoring and recording CO<sub>2</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this subchapter and 40 CFR Part 75.

(iv) An owner or operator of a CO<sub>2</sub> budget unit may not retire or permanently discontinue use of the CEMS, any component thereof or another approved emissions monitoring system under this subchapter, except under one of the following circumstances:

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

(B) The CO<sub>2</sub> authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 145.372(d)(3)(i) (relating to initial certification and recertification procedures).

**§ 145.372. Initial certification and recertification procedures.**

(a) The owner or operator of a CO<sub>2</sub> budget unit shall be exempt from the initial certification requirements for a monitoring system under § 145.371(a)(1)(i) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with 40 CFR Part 75.

(2) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and 40 CFR Part 75, Appendix B and Appendix D are fully met for the certified monitoring system described in paragraph (a)(1).

(b) The recertification provisions of this section shall apply to a monitoring system under § 145.371(a)(1)(i) that is exempt from initial certification requirements under subsection (a).

(c) Notwithstanding subsection (a), if the Administrator approved a petition under 40 CFR 75.72(b)(2)(ii) or 40 CFR 75.16(b)(2)(ii)(B) as pursuant to 40 CFR 75.13 for apportioning the CO<sub>2</sub> emissions rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative requirement in 40 CFR Part 75, the CO<sub>2</sub> authorized account representative shall submit the petition to the Department under § 145.376(a) to determine if the approval applies under the CO<sub>2</sub> Budget Trading Program.

(d) Except as provided in subsection (a), the owner or operator of a CO<sub>2</sub> budget unit shall comply with the initial certification and recertification procedures for a CEMS and an excepted monitoring system under 40 CFR Part 75, Appendix D and under § 145.371(a)(1)(i). The owner or operator of a CO<sub>2</sub> budget unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under 40 CFR Part 75, Subpart E shall comply with the procedures in subsections (e) or (f), respectively.

(1) *Requirements for initial certification.* The owner or operator of a CO<sub>2</sub> budget unit shall ensure that each CEMS required under § 145.371(a)(1)(i), including the automated data acquisition and handling system, successfully completes all of the initial certification testing

required under 40 CFR 75.20 by the applicable deadlines specified in § 145.371(a)(2). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subchapter in a location where no monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

*(2) Requirements for recertification.*

(i) Whenever the owner or operator makes a replacement, modification or change to a certified CEMS under § 145.371(a)(1)(i) that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record CO<sub>2</sub> mass emissions or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or 40 CFR Part 75, Appendix B, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b).

(ii) For a system using stack measurements including stack flow, stack moisture content, CO<sub>2</sub> or O<sub>2</sub> monitors, whenever the owner or operator makes a replacement, modification or change to the flue gas handling system or the unit's operation that the Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b).

*(3) Approval process for initial certification and recertification.*

(i) *Notification of certification.* The CO<sub>2</sub> authorized account representative shall submit to the Department and the appropriate EPA Regional Office a written notice of the dates of certification in accordance with § 145.374.

(ii) *Certification application.* The CO<sub>2</sub> authorized account representative shall submit to the Department a certification application for each monitoring system required under 40 CFR 75.63. A complete certification application shall include the information specified in 40 CFR 75.63.

(iii) *Provisional certification data.* The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO<sub>2</sub> budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under subparagraph (d)(3)(ii). Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), if the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.

(iv) *Certification application approval process.* The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subparagraph (d)(3)(ii). If the Department does not issue the notice within the 120-day period, each monitoring system which

meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO<sub>2</sub> Budget Trading Program.

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

(B) *Incomplete application notice.* If the certification application is not complete, the Department will issue a written notice of incompleteness that sets a date by which the CO<sub>2</sub> authorized account representative must submit the additional information required to complete the certification application. If the CO<sub>2</sub> authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under clause (d)(3)(iv)(C). The 120-day review period may not begin prior to receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of 40 CFR Part 75, or if the certification application is incomplete and the requirement for disapproval under clause (d)(3)(iv)(B) is met, then the Department will issue a written notice of disapproval of the certification application. Upon issuance of the notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof will not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subparagraph (d)(3)(v) for each monitoring system or component thereof which is disapproved for initial certification.

(D) *Audit decertification.* The Department may issue a notice of disapproval of the certification status of a monitor in accordance with § 145.373(b).

(v) *Procedures for loss of certification.* If the Department issues a notice of disapproval of a certification application under clause (d)(3)(iv)(C) or a notice of disapproval of certification status under clause (d)(3)(iv)(D), the following apply:

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

(I) For a unit using or intending to monitor for CO<sub>2</sub> mass emissions using heat input or for a unit using the low mass emissions excepted methodology under 40 CFR 75.19, the maximum potential hourly heat input of the unit.

(II) For a unit intending to monitor for CO<sub>2</sub> mass emissions using a CO<sub>2</sub> pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO<sub>2</sub> and the maximum potential flow rate of the unit under 40 CFR Part 75, Appendix A, Section 2.1.

(B) The CO<sub>2</sub> authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subparagraphs (d)(3)(i) and (ii).

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

(e) *Initial certification and recertification procedures for low mass emissions units using the excepted methodologies under § 145.371(a)(3)(ii).* The owner or operator of a unit qualified to use the low mass emissions excepted methodology under § 145.371(a)(3)(ii) shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h) and this section. If the owner or operator of the unit elects to certify a fuel flow meter system for heat input determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

(f) *Certification/recertification procedures for an alternative monitoring system.* The CO<sub>2</sub> authorized account representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, by the Department under 40 CFR Part 75, Subpart E shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

#### **§ 145.373. Out-of-control periods.**

(a) *Quality assurance requirements.* Whenever a monitoring system fails to meet the quality assurance and quality control requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable procedures in 40 CFR Part 75, Subpart D or Appendix D.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 145.372 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of the monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system will not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the initial certification or recertification procedures in § 145.372 for each disapproved monitoring system.

#### **§ 145.374. Notifications.**

The CO<sub>2</sub> authorized account representative for a CO<sub>2</sub> budget unit shall submit written notice to the Department and the Administrator in accordance with 40 CFR 75.61.

**§ 145.375. Recordkeeping and reporting.**

(a) *General provisions.* The CO<sub>2</sub> authorized account representative shall comply with the recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73 and with the requirements of § 145.311(e).

(b) *Monitoring plans.* The owner or operator of a CO<sub>2</sub> budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.

(c) *Certification applications.* The CO<sub>2</sub> authorized account representative shall submit an application to the Department within 45 days after completing all CO<sub>2</sub> monitoring system initial certification or recertification tests required under § 145.372 including the information required under 40 CFR 75.63 and 40 CFR 75.53(g) and (h).

(d) *Quarterly reports.* The CO<sub>2</sub> authorized account representative shall submit quarterly reports, as follows:

(1) The CO<sub>2</sub> mass emissions data for the CO<sub>2</sub> budget unit, in an electronic format prescribed by the Administrator unless otherwise prescribed by the Administrator or the Department for each calendar quarter beginning with one of the following:

(i) For a unit that commenced commercial operation before January 1, 2020, the calendar quarter covering January 1, 2022 through March 31, 2022.

(ii) For a unit that commenced commercial operation on or after January 1, 2020, the calendar quarter corresponding to, the earlier of the date of provisional certification or the applicable deadline for initial certification under § 145.371(b) or, unless that quarter is the third or fourth quarter of 2021, in which case reporting shall commence in the quarter covering January 1, 2022 through March 31, 2022.

(2) The CO<sub>2</sub> authorized account representative shall submit each quarterly report to the Administrator and the Department or its agent within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR Part 75, Subpart H and 40 CFR 75.64.

(i) Quarterly reports shall be submitted for each CO<sub>2</sub> budget unit, or group of units using a common stack, and shall include all the data and information required in 40 CFR Part 75, Subpart G except for opacity, heat input, NO<sub>x</sub> and SO<sub>2</sub> provisions.

(3) *Compliance certification.* The CO<sub>2</sub> authorized account representative shall submit to the Administrator or the Department a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all the

unit's emissions are correctly and fully monitored. The certification shall state that the following conditions have been met:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subchapter and 40 CFR Part 75, including the quality assurance procedures and specifications.

(ii) For a unit with add-on CO<sub>2</sub> emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the quality assurance/quality control program under 40 CFR Part 75, Appendix B and the substitute values do not systematically underestimate CO<sub>2</sub> emissions.

(iii) The CO<sub>2</sub> concentration values substituted for missing data under 40 CFR Part 75, Subpart D do not systematically underestimate CO<sub>2</sub> emissions.

#### **§ 145.376. Petitions.**

(a) Except as provided in subsection (c), the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Department requesting approval to apply an alternative to any requirement of 40 CFR Part 75.

(b) Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this subchapter only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.

(c) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is not subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this subchapter only to the extent that the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.

(d) In the event that the Administrator declines to review a petition under subsection (c), the CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is not subject to an acid rain emissions limitation may submit a petition to the Department requesting approval to apply an alternative to any requirement of §§ 145.371—145.378. That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of §§ 145.371—145.378 is in accordance with §§ 145.371—145.378 only to the extent that the petition is approved in writing by the Department.

(e) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that is subject to an acid rain emissions limitation may submit a petition to the Administrator under 40 CFR 75.66 and to the Department requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a CO<sub>2</sub>



concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any requirement is in accordance with §§ 145.371—145.378 only to the extent the petition is approved in writing by the Administrator and subsequently approved in writing by the Department.

**§ 145.377. CO<sub>2</sub> budget units that co-fire eligible biomass.**

(a) The CO<sub>2</sub> authorized account representative of a CO<sub>2</sub> budget unit that co-fires eligible biomass as a compliance mechanism under this subchapter shall report the following information to the Department or its agent for each calendar quarter:

- (1) For each shipment of solid eligible biomass fuel fired at the CO<sub>2</sub> budget unit:
  - (i) The total eligible biomass fuel input, on an as-fired basis, in pounds.
  - (ii) The moisture content, on an as-fired basis, as a fraction by weight.
- (2) For each distinct type of gaseous eligible biomass fuel fired at the CO<sub>2</sub> budget unit:
  - (i) The density of the biogas, on an as-fired basis, in pounds per standard cubic foot.
  - (ii) The moisture content of the biogas, on an as-fired basis, as a fraction by total weight.
  - (iii) The total eligible biomass fuel input, in standard cubic feet.
- (3) For each distinct type of eligible biomass fuel fired at the CO<sub>2</sub> budget unit:
  - (i) The dry basis carbon content of the fuel type, as a fraction by dry weight.
  - (ii) The dry basis higher heating value, in MMBtu per dry pound.
  - (iii) The total dry basis eligible biomass fuel input, in pounds, calculated in accordance with subsection (b).
  - (iv) The total eligible biomass fuel heat input, in MMBtu, calculated in accordance with paragraph (d)(1).
  - (v) A chemical analysis, including heating value and carbon content.
- (4) The total amount of CO<sub>2</sub> emitted from the CO<sub>2</sub> budget unit due to firing eligible biomass fuel, in tons, calculated in accordance with subsection (c).
- (5) The total amount of heat input to the CO<sub>2</sub> budget unit due to firing eligible biomass fuel, in MMBtu, calculated in accordance with paragraph (d)(2).
- (6) A description and documentation of the monitoring technology employed, and a

description and documentation of the fuel sampling methodology employed, including sampling frequency.

(b) An owner or operator of a CO<sub>2</sub> budget unit shall calculate and submit to the Department or its agent on a quarterly basis the total dry weight for each distinct type of eligible biomass fired by the CO<sub>2</sub> budget unit during the reporting quarter. The total dry weight shall be determined for each fuel type as follows:

(1) For solid fuel types:

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

F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j.

F<sub>i</sub> = Eligible biomass as fired fuel input (lbs) for fired shipment i.

M<sub>i</sub> = Moisture content (fraction) for fired shipment i.

i = Fired fuel shipment.

j = Fuel type.

m = Number of shipments.

(2) For gaseous fuel types:

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

Where:

F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j.

D<sub>j</sub> = Density of biogas (lbs/scf) for fuel type j.

V<sub>j</sub> = Total volume (scf) for fuel type j.

M<sub>j</sub> = Moisture content (fraction) for fuel type j.

j = Fuel type.

(c) CO<sub>2</sub> emissions due to firing of eligible biomass shall be determined as follows:

(1) For any full calendar quarter during which no fuel other than eligible biomass is combusted at the CO<sub>2</sub> budget unit, as measured and recorded in accordance with §§ 145.371—145.376 or for any full calendar quarter during which fuels other than eligible biomass are combusted at the CO<sub>2</sub> budget unit, as determined using the following equation:

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

Where:

CO<sub>2</sub> tons = CO<sub>2</sub> emissions due to firing of eligible biomass for the reporting quarter.

F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated in subsection (b).

C<sub>j</sub> = Carbon fraction (dry basis) for fuel type j.

O<sub>j</sub> = Oxidation factor for eligible biomass fuel type j, derived for solid fuels based on the ash content of the eligible biomass fired and the carbon content of this ash, as determined pursuant to paragraph (a)(6); for gaseous eligible biomass fuels, a default oxidation factor of 0.995 may be used.

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

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

j = Fuel type.

n = Number of distinct fuel types.

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

(1) For each distinct fuel type:

$$H_j = F_j \times HHV_j$$

Where:

H<sub>j</sub> = Heat input (MMBtu) for fuel type j.

F<sub>j</sub> = Total eligible biomass dry basis fuel input (lbs) for fuel type j, as calculated in subsection (b).

HHV<sub>j</sub> = Higher heating value (MMBtu/lb), dry basis, for fuel type j, as determined through chemical analysis.

j = Fuel type.

(2) For all fuel types:

$$\text{Heat input MMBtu} = \sum_{i=1}^n H_j$$

Where:

H<sub>j</sub> = Heat input (MMBtu) for fuel type j.

j = Fuel type.

n = Number of distinct fuel types.

**§ 145.378. Additional requirements to provide output data.**

(a) *Reporting.* The owner or operator of a CO<sub>2</sub> budget unit shall report net electrical output and net thermal output to the Department in accordance with an output monitoring plan under subsection (c).

(b) *Billing meter.* A CO<sub>2</sub> budget source that sells steam should use a billing meter to determine and report net steam output. If data for steam output is not available, the CO<sub>2</sub> budget source may report heat input providing useful steam output as a surrogate for steam output in accordance with an output monitoring plan under subsection (c).

(c) *Output Monitoring Plan.* The owner or operator of each CO<sub>2</sub> budget source must submit an output monitoring plan to the Department that includes the following:

(1) A description of each output monitoring system. The description of the output monitoring system should include a written description of the output system, the equations used to calculate output and gross hourly MW. For a net thermal output system, a description and justification of each useful load should be included.

(2) A detailed description of all quality assurance and quality control activities that will be performed to maintain the output system in accordance with subsection (g).

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

(d) *Initial certification.* A certification statement must be submitted by the CO<sub>2</sub> authorized account representative stating that either the output monitoring system consists entirely of billing

meters or that the output monitoring system meets one of the accuracy requirements for non-billing meters in paragraph (d)(2). This statement may be submitted with the certification application required under § 145.375(c). The certification shall state that the monitoring system meets the following:

(1) *Billing meter*. The billing meter must record the electrical or thermal output. Any electrical or thermal output values that the CO<sub>2</sub> budget source reports must be the same as the values used in billing for the output. Output measurement equipment used as a billing meter in a commercial transaction does not require additional certification or testing.

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

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

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

(e) *Ongoing QA/QC*. Ongoing quality assurance and quality control activities must be performed in order to maintain the output system, in accordance with the following:

(1) *Billing meters*. Where a billing meter is used to determine output, no QA/QC activities beyond what are already performed are required.

(2) *Non-billing meters*. For a non-billing meter, the output monitoring system must either meet an accuracy of within 10% of the reference value, or each component monitor for the output system must meet an accuracy of within 3% of the full-scale value, whichever is less stringent. If testing a piece of output measurement equipment shows that the output readings are not accurate to within 3% of the full-scale value, then the equipment should be repaired or replaced to meet that requirement.

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

monitoring plan required under subsection (c).

(f) *Recordkeeping and reporting.*

(1) *Recordkeeping.* The owner or operator of a CO<sub>2</sub> budget source shall retain data used to monitor, determine or calculate net electrical output and net thermal output for 10 years.

(3) *Annual reports.* The CO<sub>2</sub> authorized account representative shall submit an annual output report to the Department, as follows:

(i) Electronically by March 1 for the immediately preceding calendar year.

(ii) Upon request by the Department, in hardcopy.

(iii) Include unit level MWh and all useful steam output.

(iv) Include a certification statement from the CO<sub>2</sub> authorized account representative stating the following:

“I am authorized to make this submission on behalf of the owner or operator of the CO<sub>2</sub> budget sources or CO<sub>2</sub> budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

### **Auction of CO<sub>2</sub> CCR and ECR allowances**

Sec.

145.381. Purpose.

145.382. General requirements.

#### **§ 145.381. Purpose.**

The following requirements shall apply to each allowance auction. The Department or its agent may specify additional information in the auction notice for each auction. Such additional information may include the time and location of the auction, auction rules, registration deadlines and any additional information deemed necessary or useful.

#### **§ 145.382. General Requirements.**

(a) In the auction notice for each auction, the Department or its agent shall include the following:

(1) The number of CO<sub>2</sub> allowances offered for sale at the auction, not including any CO<sub>2</sub> CCR allowances.

(2) The number of CO<sub>2</sub> CCR allowances that will be offered for sale at the auction if the condition in paragraph (b)(1) is met.

(3) The minimum reserve price for the auction.

(4) *The CCR trigger price for the auction.* The CCR trigger price in calendar year 2022 shall be \$13.91. Each calendar year after 2022, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 1.

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

2023	2024	2025	2026	2027	2028	2029	2030
\$14.88	\$15.92	\$17.03	\$18.22	\$19.50	\$20.87	\$22.33	\$23.89

(5) The maximum number of CO<sub>2</sub> allowances that may be withheld from sale at the auction if the condition in paragraph (d)(1) is met.

(6) *The ECR trigger price for the auction.* The ECR trigger price in calendar year 2022 shall be \$6.42. Each calendar year after 2022, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 2.

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

2023	2024	2025	2026	2027	2028	2029	2030
\$ 6.87	\$ 7.35	\$ 7.86	\$ 8.41	\$ 9.00	\$ 9.63	\$10.30	\$11.02

(b) For the sale of CO<sub>2</sub> CCR allowances, the Department or its agent will do the following:

(1) CO<sub>2</sub> CCR allowances will only be sold at an auction in which the total demand for 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) If the condition in paragraph (b)(1) is met at an auction, then the number of CO<sub>2</sub> CCR allowances offered for sale by the Department or its agent at the auction will be equal to the number of CO<sub>2</sub> CCR allowances in the air pollution reduction account at the time of the auction.

(3) After all of the CO<sub>2</sub> CCR allowances in the air pollution reduction 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 in paragraph (b)(1) is met at an auction.

(4) At an auction in which CO<sub>2</sub> CCR allowances are sold, the reserve price at for the auction shall be the CCR trigger price.

(5) If the condition in paragraph (b)(1) is not satisfied, no CO<sub>2</sub> CCR allowances will be offered for sale at the auction and the reserve price for the auction will be equal to the minimum reserve price.

(c) The Department or its agent will implement the reserve price in the following manner:

(1) No allowances will be sold at any auction for a price below the reserve price for that auction.

(2) If the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

(d) For the withholding of CO<sub>2</sub> ECR allowances from an auction, the Department or its agent will do the following:

(1) CO<sub>2</sub> ECR allowances will only be withheld from an auction if the demand for 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 (d)(1) 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 in § 145.342(e)(1) minus the total quantity of CO<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year. The Department will transfer any CO<sub>2</sub> ECR allowances withheld from an auction into the Pennsylvania ECR Account.

### **CO<sub>2</sub> Emissions Offset Projects**

Sec.

145.391.	Purpose.
145.392.	Definitions.
145.393.	General requirements.
145.394.	Application process.
145.395.	CO <sub>2</sub> emissions offset project standards.
145.396.	Accreditation of independent verifiers.
145.397.	Award and recordation of CO <sub>2</sub> offset allowances.

#### **§ 145.391. Purpose.**

The Department may award 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>, CO<sub>2</sub> equivalent or sequestered carbon as demonstrated in accordance with the applicable provisions of §§ 145.391—145.397. The requirements of §§ 145.391—145.397 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 § 145.355(a)(3), CO<sub>2</sub> offset allowances may be used by any CO<sub>2</sub> budget source for compliance purposes.



**§ 145.392. Definitions.**

The following words and terms, when used in §§ 145.391—145.397, have the following meanings, unless the context clearly indicates otherwise:

*Abandoned well*—A well that meets the definition of a well under section 3203 of the 2012 Oil and Gas Act (58 Pa.C.S. § 3203) and for which no person has a continuing obligation to plug.

*AEPS—Alternative energy portfolio standards*—Standards establishing that a certain amount of energy sold from alternative energy sources, as defined under section 1648.2 of the Alternative Energy Portfolio Standards Act (73 P.S. § 1648.2), is included as part of the sources of electric generation by electric utilities within this Commonwealth.

*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 that includes a methane recovery system.

*Anaerobic digestion*—The decomposition of organic material including manure brought about through the action of microorganisms in the absence of elemental oxygen.

*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.

*ANSI*—American National Standards Institute.

*Biogas*—Gas resulting from the decomposition of organic matter under anaerobic conditions, the principle constituents of which are methane and carbon dioxide.

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

*Cooperating regulatory agency*—A regulatory agency in a state or United States jurisdiction that is not a participating state that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states to carry out certain obligations relative to CO<sub>2</sub> emissions offset projects in that state or United States jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of §§ 145.391—145.397 to the Department.

*Forest offset project*—An offset project involving reforestation, improved forest management or avoided conversion.

*Forest offset project data report*—The report prepared by a project sponsor each year that provides the information and documentation required by §§ 145.391—145.397 or the forest offset protocol.

*Forest offset protocol*—The protocol titled “Regional Greenhouse Gas Initiative Offset Protocol U.S. Forest Projects,” published by the participating states on June 12, 2013.

*Independent verifier*—An individual that has been approved by the Department or its agent to conduct verification activities.

*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 offset project boundary

*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.

*Offset project*—

(i) 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 § 145.394.

(ii) This term does not include 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, unless specified in § 145.395.

*Permanently retired*—A greenhouse gas allowance or credit that has been placed in a retirement account controlled by the jurisdiction that generated the allowance or credit, or has been placed in an allowance retirement account controlled by the Department or is otherwise determined by the Department to have been rendered unusable.

*Project commencement*—

(i) 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 the activity.

(ii) For an offset project that involves the implementation of a management activity or protocol, the date on which the activity is first implemented or the protocol is first utilized.

(iii) For an offset project involving reforestation, improved forest management or avoided conversion, the date specified in section 3.2 of the forest offset protocol.

*Project sponsor*—The sponsor of an offset project under §§ 145.391—145.397.

*Regional-type anaerobic digester*—An anaerobic digester using feedstock from more than one agricultural operation or importing feedstock from more than one agricultural operation.

*Reporting Period*—The period of time covered by a forest offset project data report. The first reporting period for a forest 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.

*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.

*System benefit fund*—Any fund collected directly from retail electricity or natural gas ratepayers.

*Total solids*—The total of all solids in a sample, including the total suspended solids, total dissolved solids and volatile suspended solids.

*Transmission and/or distribution entity*—The assets and equipment used to transmit and distribute electricity from an electric generator to the electrical load of a customer. The term includes all related assets and equipment located within the service territory of the entity, defined as the service territory of a load-serving entity specified by the applicable state regulatory agency.

*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.

*Verification*—The confirmation by an independent verifier that certain parts of a CO<sub>2</sub> emissions offset project consistency application and measurement, monitoring or verification report conforms to the requirements of §§ 145.391—145.397.

*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).

### **§ 145.393. 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 §§ 145.391—145.397.

(1) *Offset project types.* The following types of offset projects are eligible for the award of CO<sub>2</sub> offset allowances, **including but not limited to:**

(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.

(iv) Abandoned well plugging.

(2) *Offset project locations.*

(i) To qualify for the award of CO<sub>2</sub> offset allowances, eligible offset projects must be located in:

(A) Pennsylvania.

(B) Any state or United States jurisdiction with a cooperating regulatory agency.

(ii) Projects located in whole or in part in one or more participating states are not eligible for CO<sub>2</sub> offset allowances unless more of the CO<sub>2</sub> equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in Pennsylvania than in any other participating state.

(b) *Project sponsor.* Any person may act as the sponsor of an eligible CO<sub>2</sub> emissions offset project, provided that person meets the requirements under § 145.394.

(c) *General additionality requirements.* Except as provided under § 145.395, the Department will not award CO<sub>2</sub> offset allowances to an offset project that meets the following:

(1) An offset project that is required pursuant to any local, state or federal law, regulation, or administrative or judicial order. If an offset project receives a consistency determination under § 145.394 and is later required by local, state or federal law, regulation, or administrative or judicial order, then the offset project will remain eligible for the award of CO<sub>2</sub> offset allowances until the end of its current allocation period but its eligibility will not be extended for an additional allocation period.

(2) 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 § 145.397, generated from the operation of the offset project that may be used for compliance with AEPS or other regulatory requirement, to the Department or its agent.

(3) An offset project that receives funding or other incentives from any system benefit fund or other incentives provided through revenue from the auction or sale of CO<sub>2</sub> allowances in the **air pollution reduction account under § 145.342(a).**

(4) An offset project that is awarded credits or allowances under any other mandatory or voluntary greenhouse gas program, except as described in § 145.395(b)(10).

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

(1) *Maximum allocation periods.* Except as provided in paragraph (d)(2), the Department may award CO<sub>2</sub> offset allowances under § 145.397 for an initial 10-year allocation period. At the end of the initial 10-year allocation period, the Department may award CO<sub>2</sub> offset allowances for a second 10-year allocation period, provided the offset sponsor has submitted a consistency application under § 145.394 prior to the expiration of the initial allocation period, and the Department has issued a consistency determination under § 145.394(e)(2).

(2) *Maximum allocation period for reforestation, improved forest management or avoided conversion.* The Department may award CO<sub>2</sub> offset allowances under § 145.397 for any project involving reforestation, improved forest management, or avoided conversion for an initial 25-year allocation period. At the end of the initial 25-year allocation period, or any subsequent crediting period, the Department may award CO<sub>2</sub> offset allowances for a subsequent 25-year allocation period, provided the offset sponsor has submitted a consistency application for the offset project under § 145.394 prior to the expiration of the initial allocation period, and the Department has issued a consistency determination under § 145.394(e)(2).

(e) *Offset project audit.* A project sponsor shall provide in writing, an access agreement to the Department granting the Department or its agent access to the physical location of the offset project to inspect for compliance with §§ 145.391—145.397. For offset projects located in any state or other U.S. jurisdiction that is not a participating state, project sponsors shall also provide, in writing, an access agreement to the Department granting the cooperating regulatory agency with access to the physical location of the offset project to inspect for compliance with §§ 145.391—145.397.

(f) *Ineligibility due to noncompliance.*

(1) If at any time the Department determines that a project sponsor has not complied with the requirements of §§ 145.391—145.397, then the Department 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 Department determines that an offset project does not comply with the requirements of §§ 145.391—145.397, then the Department may revoke any approvals it has issued relative to the offset project.

**§ 145.394. Application process.**

(a) *Establishment of general account.* The sponsor of an offset project must establish a general account under § 145.352(b). All submissions to the Department required for the award of CO<sub>2</sub> offset allowances under §§ 145.391—145.397 must be from the CO<sub>2</sub> authorized account representative for the general account of the project sponsor.

(b) *Consistency application deadlines.* A consistency application for an offset project shall be submitted, in a format prescribed by the Department and consistent with the requirements of this section by the following deadlines:

(1) For an offset project not involving reforestation, improved forest management or avoided conversion, by the date that is 6 months after the offset project is commenced.

(2) For an offset project involving reforestation, improved forest management or avoided conversion the consistency application, by the date that is one year after the offset project is commenced, except as provided under § 145.395(b)(9).

(3) The Department will deny any consistency application that fails to meet the deadlines in subsection (b).

(c) *Consistency application contents.*

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

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

(ii) The offset project description as required by the relevant provisions under § 145.395.

(iii) A demonstration that the offset project meets all applicable requirements in §§ 145.391—145.397.

(iv) The emissions baseline determination as required by the relevant provisions under § 145.395.

(v) An explanation of how the projected reduction or avoidance of atmospheric loading of CO<sub>2</sub> or CO<sub>2</sub> equivalent or the sequestration of carbon is to be quantified, monitored and verified as required by the relevant provisions under § 145.395.

(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 CO<sub>2</sub> Budget Trading Program is predicated on the project sponsor following all the requirements of §§ 145.391—145.397. 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 §§ 145.391—145.397 is contingent on meeting the requirements of §§ 145.391—145.397. I authorize the Department or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in this application. I understand that this right to audit shall include the right to enter the physical location of the offset project. I submit to the legal jurisdiction of the Commonwealth of Pennsylvania.”

(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 §§ 145.391—145.397, under the sponsor’s ownership or control or under the ownership or control of any entity which controls, is controlled by, or has common control with the sponsor are in compliance with all applicable requirements of the CO<sub>2</sub> Budget Trading Program in all participating states.

(viii) A verification report and certification statement signed by an independent verifier accredited under § 145.396 that expresses that the independent verifier has reviewed the entire application and evaluated the following in relation to the applicable requirements at § 145.393 and § 145.395, and any applicable guidance issued by the Department:

(A) The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of § 145.393 and § 145.395.

(B) The adequacy and validity of information supplied by the project sponsor to demonstrate baseline emissions pursuant to the applicable requirements under § 145.395.

(C) The adequacy of the monitoring and verification plan submitted pursuant to the applicable requirements under § 145.395.

(D) Any other evaluations and statements as may be required by the Department.

(ix) Disclosure of any voluntary or mandatory programs, other than the CO<sub>2</sub> Budget Trading Program, to which greenhouse gas emissions data related to the offset project has been or will be reported.

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

(d) The Department will not accept as submitted a consistency application for an offset project if a consistency application has already been submitted for the same project, or any portion of the same project, in another participating state, unless the consistency application was rejected by another participating state solely because more of the CO<sub>2</sub> equivalent emissions reduction or carbon sequestration resulting from the offset project is projected to occur in Pennsylvania than in any other participating state.

(e) *Department action on consistency applications.*

(1) *Completeness determination.* Within 30 days following receipt of the consistency application submitted pursuant to subsection (b), the Department will notify the project sponsor whether the consistency application is complete. A complete consistency application is one that is in a form prescribed by the Department and is determined by the Department to contain all applicable information and documentation required by §§ 145.391—145.397. In no event will a

completeness determination prevent the Department from requesting additional information in order to make a consistency determination under paragraph (e)(2).

(2) *Consistency determination.* Within 90 days of making the completeness determination under paragraph (e)(1), the Department will issue a determination as to whether the offset project is consistent with the requirements of § 145.393 and this section and the requirements of the applicable offset project standard of § 145.395. For any offset project found to lack consistency with these requirements, the Department will inform the project sponsor of the offset project's deficiencies.

**§ 145.395. 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 §§ 145.391—145.397, an offset project that captures and destroys methane from a landfill shall meet the requirements of this subsection and all other applicable requirements of §§ 145.391—145.397.

(1) *Eligibility.* An offset project shall occur at a landfill that is not subject to the New Source Performance Standards for municipal solid waste landfills, 40 CFR Part 60, Subpart Cc and Subpart WWW.

(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 (a)(1). The project narrative shall include the following:

- (i) Identification of the owner or operator of the offset project.
- (ii) Location and specifications of the landfill where the offset project will occur, including waste in place.
- (iii) Identification of the owner or operator of the landfill where the offset project will occur.
- (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 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 as follows:

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

Where:

V = volume of CH<sub>4</sub> collected (ft<sup>3</sup>).

M = Mass of CH<sub>4</sub> per cubic foot (0.04246 lbs/ft<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.

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:

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

Where:

V = Volume of CH<sub>4</sub> collected (ft<sup>3</sup>).

M = Mass of CH<sub>4</sub> per cubic foot (0.04246 lbs/ft<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).

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

(5) *Monitoring and verification requirements.* An offset project 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 is also subject to the following:

(i) As part of the consistency application, the project sponsor shall submit a monitoring and verification plan 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 under § 145.396.

(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 §§ 145.391—145.397, an offset project that involves reforestation, improved forest management, or avoided conversion shall meet all requirements of this subsection and the forest offset protocol, and all other applicable requirements of §§ 145.391—145.397.

(1) *Eligibility.* A forest offset project shall satisfy all eligibility requirements of the forest offset protocol and this subsection.

(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 (b)(1). The offset project description must include all information identified in sections 8.1 and 9.1 of the forest offset protocol, and any other information deemed necessary by the Department.

(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:

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

(ii) The consistency application shall include a monitoring and verification plan certified by an independent verifier accredited under § 145.396 and 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 12 years of project commencement.

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

(7) Prior to the award of CO<sub>2</sub> offset allowances pursuant to § 145.397, or to any surrender of

allowances pursuant to § 145.395(b)(8)(ii)(C), any quantity expressed in metric tons, or metric tons of CO<sub>2</sub> equivalent, shall be converted to tons using the conversion factor specified in § 145.302.

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

(i) *Unintentional reversals.* The project sponsor shall address an unintentional reversal of sequestered carbon as follows:

(A) Notify the Department of the reversal and provide an explanation for the nature of the unintentional reversal within 30 calendar days of its discovery.

(B) Submit to the Department 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.* The project sponsor shall address an intentional reversal of sequestered carbon as follows:

(A) Notify the Department in writing of the intentional reversal and provide a written description and explanation of the intentional reversal within 30 calendar days of the intentional reversal.

(B) Submit to the Department a verified estimate of current carbon stocks within the offset project boundary within one year of the occurrence of an intentional reversal

(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 Department or its agent for retirement a quantity of CO<sub>2</sub> allowances corresponding to the quantity of CO<sub>2</sub> equivalent tons reversed within six months of notification by the Department.

(I) The Department will provide notification after the project sponsor has submitted a verified estimate of carbon stocks to the Department, or if the project sponsor fails to submit verified estimate of carbon stocks after one year has elapsed since the occurrence of the intentional reversal.

(II) If the forest owner does not surrender valid CO<sub>2</sub> allowances to the Department within six months of notification by the Department, the forest owner will be subject to enforcement action and each CO<sub>2</sub> equivalent ton of carbon sequestration intentionally reversed will constitute a separate violation of this subchapter and the act.

(D) *Project Termination Requirements.*

(I) The project sponsor must surrender to the Department 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.

(II) If the project sponsor does not surrender to the Department 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 project sponsor will be subject to enforcement action and each CO<sub>2</sub> offset allowance not surrendered will constitute a separate violation of this subchapter and the act.

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

(9) *Timing of forest offset projects.* The Department may award CO<sub>2</sub> offset allowances under § 145.397 only for forest offset projects that are initially commenced on or after January 1, 2014.

(10) *Projects that Have Been Awarded Credits by a Voluntary Greenhouse Gas Reduction Program.* The provisions of § 145.393(c)(4) and § 145.394(b)(2) shall not apply to forest projects that have been awarded credits under a voluntary greenhouse gas reduction program. For those projects, the number of CO<sub>2</sub> offset allowances will be calculated pursuant to the requirements of this subsection, without regard to quantity of credits that were awarded to the project under the voluntary program, provided that the project satisfies the following:

(i) All other general requirements of §§ 145.391—145.397, including all specific requirements of this subsection, 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 § 145.397.

(ii) At the time of submittal of the consistency application for the project, the project sponsor 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 § 145.397. Forest offset data reports and monitoring and verification reports must meet all requirements of paragraphs (b)(5) and (b)(6).

(iii) The voluntary greenhouse gas program has published information on its website to allow the Department to verify the information included in the consistency application and the consistency application includes information sufficient to allow the Department to determine the following:

(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 the 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 § 145.397, and the credits

were cancelled or retired for the sole purpose of allowing the project to be awarded CO<sub>2</sub> offset allowances pursuant to § 145.397.

(c) *Avoided methane emissions from agricultural manure management operations.* To qualify for the award of CO<sub>2</sub> offset allowances under §§ 145.391—145.397, an offset project that captures and destroys methane from animal manure and organic food waste using anaerobic digesters shall meet the requirements of this subsection and all other applicable requirements of §§ 145.391—145.397.

(1) *Eligibility.* To be eligible for CO<sub>2</sub> offset allowances, an offset project under subsection (c) shall:

(i) 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) 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.

(2) *Exceptions to the general requirements.* The provisions of § 145.393(c)(2) and (c)(3) shall not apply to an agricultural manure management offset project that meets the following:

(A) The offset project is located in a state that has a market penetration rate for anaerobic digester projects of 5% or less. The market penetration determination shall utilize the most recent market data available at the time of submission of the consistency application under § 145.394 and shall be determined as follows:

$$MP (\%) = MGAD / MG STATE$$

Where:

MGAD = Average annual manure generation for the number of dairy cows and swine serving all anaerobic digester projects in the applicable state at the time of submission of a consistency application under § 145.394.

MG STATE = Average annual manure production of all dairy cows and swine in the state at the time of submission of a consistency application under § 145.394.

(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 in pounds per cow of 1,400 pounds, 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 in pounds per cow of 1,400 pounds.

(3) *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 (c)(1). The offset project narrative shall include the following:

- (i) Identification of the owner or operator of the offset project.
- (ii) Location and specifications of the facility where the offset project will occur.
- (iii) Identification of the owner or 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.
- (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.

(4) *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:

$$E_b = (V_m \times M) / 2000 \times GWP$$

Where:

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

$V_m$  = 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 (ft<sup>3</sup>).

$M$  = Mass of CH<sub>4</sub> per cubic foot (0.04246 lb/ft<sup>3</sup> default value at one atmosphere and 20°C).

$GWP$  = 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 in kilograms (kg) shall be calculated as follows:

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

Where:

VS = Volatile solids as determined from the equation:

$$VS = Mm \times TS\% \times VS\%$$

Where:

Mm = 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 (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 (EPA/600/4-79/020)).

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

$$VS_{avail} = VSp + \frac{1}{2} VSin - VSout$$

Where:

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

VSin = 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.

VSout = Volatile solids removed from the manure or organic food waste storage for land application or export (assumed value based on standard farm practice).

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

$$f = \exp\left\{\frac{E(T2 - T1)}{(GC \times T1 \times T2)}\right\}$$

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 degrees Celsius to degrees 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).

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

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

$$V_m = (VS_{dec} \times B_o) \times 35.3147$$

Where:

$V_m$  = Volume of CH<sub>4</sub> (ft<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 Department. If the project sponsor proposes to use a methane generation constant other than the ones found in the above-cited reference, the project sponsor must provide justification and documentation to the Department.

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

$$ER_t = E_b - E_p$$

Where:

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

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

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

(6) *Transport CO<sub>2</sub> emissions.* 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 (c)(5). 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 (c)(4)(i)—(iii). 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 emissions factors shall be applied as appropriate:

(A) Diesel fuel: 22.912 lbs. CO<sub>2</sub>/gallon.

(B) Gasoline: 19.878 lbs. CO<sub>2</sub>/gallon.

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

(ii) Documentation of total 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 (c)(7)(i), 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 ton-mile transport emission factor for the fuel type used. If this option is chosen, the following emissions factors shall be applied as appropriate for each ton of manure delivered and multiplied by the number of miles transported:

(A) Diesel fuel: 0.131 lbs. CO<sub>2</sub> per ton-mile.

(B) Gasoline: 0.133 lbs. CO<sub>2</sub> per ton-mile.

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

(7) *Monitoring and verification requirements.* An offset project 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:

(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 in kilograms (kg) being digested and percentage of volatile solids present before digestion, consistent with the requirements at paragraph (c)(4) and subparagraph (c)(7)(iii) and apportioned accordingly among sources. The project sponsor shall provide supporting material and receipts tracking the monthly receipt of manure and organic food waste in kilograms (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 (c)(1)(ii), organic food waste shall be sampled monthly to determine the amount of volatile solids present before digestion, consistent with the requirements at paragraph (c)(4) and subparagraph (c)(7)(iii), 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 3. 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 under § 145.396.

**Table 3. Monitoring requirements**

<i>Parameter</i>	<i>Measurement Unit</i>	<i>Frequency of Sampling</i>	<i>Sampling Method(s)</i>
Influent flow (mass) into the digester	Kilograms (kg) per month (wet mass)	Monthly total into the digester	In descending order of preference: 1) Recorded mass 2) Digester influent pump flow 3) 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 (EPA/600/4-79/020)
Influent volatile solids (VS) concentration	Percent (of TS)	Monthly, depending upon recorded variations	US EPA Method Number 160.4, Methods for the Chemical Analysis of Water and Wastes (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	Standard cubic feet (scf)	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

(d) *Abandoned well plugging.* To qualify for the award of CO<sub>2</sub> offset allowances under §§ 145.391—145.397, an offset project that prevents the emission of methane from an abandoned well shall meet the requirements of this subsection and all other applicable requirements of §§ 145.391—145.397.

(1) *Eligibility.* An eligible offset project shall prevent the emission of methane from an abandoned well by plugging the abandoned well in accordance with the applicable plugging standards set forth in §§ 78.91–78.98 (relating to plugging).

(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 (d)(1). The project narrative shall include the following:

(i) Owner or operator of the offset project.

(ii) Location and specifications of the abandoned well that will be the subject of the offset project, including historical records involving ownership, operation and construction, if available.

(iii) Name of the surface landowner where the offset project will occur.

(iv) Specifications of the operator’s plan for plugging the abandoned well, including a schematic and procedure detailing the well plugging process.

(3) *Emissions baseline determination.* The emissions baseline shall represent the potential fugitive emissions of CH<sub>4</sub>, in tons of CO<sub>2</sub>e, as represented by the CH<sub>4</sub> escaping from the abandoned well and calculated in accordance with this paragraph.

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

Where:

V = volume of CH<sub>4</sub> emitted (ft<sup>3</sup>).

M = Mass of CH<sub>4</sub> per cubic foot (0.04246 lbs/ft<sup>3</sup> default value at 1 atmosphere, 20° C).

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 abandoned well if CH<sub>4</sub> from the abandoned well was not prevented from emitting. CO<sub>2</sub>e emissions reductions shall be calculated as follows:

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

Where:

V = Volume of CH<sub>4</sub> prevented from escaping (ft<sup>3</sup>).

M = Mass of CH<sub>4</sub> per cubic foot (0.04246 lbs/ft<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 prevented.

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

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

(5) *Monitoring and verification requirements.* To be determined

#### § 145.396. Accreditation of independent verifiers.

(a) *Standards for accreditation.* An independent verifier may be accredited by the Department to provide verification services as required of a project sponsor under this subchapter, provided that an independent verifier meets all the requirements of this section.

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

- (i) Utilizing engineering principles.
- (ii) Quantifying greenhouse gas emissions.
- (iii) Developing and evaluating air emissions inventories.
- (iv) Auditing and accounting principles.
- (v) Information management systems.
- (vi) The requirements of this subchapter.

(vii) Such other qualifications as may be required by the Department to provide competent verification services as required for individual offset categories under § 145.395.

(2) *Organizational qualifications.* An accredited independent verifier shall demonstrate that

they meet the following:

(i) No direct or indirect financial relationship, beyond a contract for provision of verification services, with any offset project developer or project sponsor.

(ii) Employ staff with professional licenses, knowledge and experience appropriate to the specific category of offset projects under § 145.395 that they seek to verify.

(iii) 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.

(iv) Implementation of 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 § 145.394(e), and remedy any conflicts of interest prior to providing verification services.

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

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

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

(2) Documentation that the applicant has at least two years of experience in each of the knowledge areas specified at subparagraphs (a)(1)(i)—(v), and as may be required under subparagraph (a)(1)(vii).

(3) Documentation that the applicant has successfully completed the requirements at paragraph (a)(3), 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). 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 under subparagraph (a)(2)(iii).

(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 under subparagraph (a)(2)(iv).

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

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

(e) *Conduct of an accredited verifier.*

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

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

(3) The Department may reject a verification report and certification statement from an accredited verifier, submitted as part of a consistency application required under § 145.394(b) or submitted as part of a monitoring and verification report submitted under § 145.397(b), if the Department determines that the accredited verifier has a conflict of interest related to the offset project, offset project developer or project sponsor.

(4) The Department may revoke the accreditation of a verifier at any time for the following:

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

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

(iii) Negligence or neglect of responsibilities pursuant to the requirements of this subchapter.

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

**§ 145.397. Award and Recordation of CO<sub>2</sub> offset allowances.**

(a) *Award of CO<sub>2</sub> offset allowances.* Following the issuance of a consistency determination under § 145.394(e)(2) and the approval of a monitoring and verification report under the provisions of subsection (e), the Department will award one CO<sub>2</sub> offset allowance for each ton of demonstrated reduction in CO<sub>2</sub> or CO<sub>2</sub> equivalent emissions or sequestration of CO<sub>2</sub>.

(b) *Recordation of CO<sub>2</sub> offset allowances.* After CO<sub>2</sub> offset allowances are awarded under paragraph (a)(1), the Department will record the CO<sub>2</sub> offset allowances in the project sponsor's general account.

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

(1) For a CO<sub>2</sub> emissions offset project undertaken prior to January 1, 2022, the project sponsor shall submit the monitoring and verification report covering the pre-2022 period by June 30, 2022.

(2) For a CO<sub>2</sub> emissions offset project undertaken on or after January 1, 2022, the project sponsor shall submit the monitoring and verification report within 6 months following the completion of the last calendar year during which the offset project achieved CO<sub>2</sub> equivalent reductions or sequestration of CO<sub>2</sub> for which the project sponsor seeks the award of CO<sub>2</sub> offset allowances.

(d) *Contents of monitoring and verification reports.* For an offset project, the monitoring and verification report must include the following:

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

(2) The CO<sub>2</sub> emissions reduction or CO<sub>2</sub> sequestration determination as required by the relevant provisions of § 145.395, including a demonstration that the project sponsor complied with the required quantification, monitoring and verification procedures under § 145.395, as well as those outlined in the consistency application approved under § 145.394(e)(2).

(3) A signed certification statement that reads "The undersigned project sponsor hereby confirms and attests that the offset project upon which this monitoring and verification report is based is in full compliance with all of the requirements of §§ 145.391—145.397. 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 §§ 145.391—145.397 is contingent on meeting the requirements of §§ 145.391—145.397. I authorize the Department or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in the consistency application that was the subject of a consistency determination by the Department. I understand that this right to audit shall include the right to enter the physical location of the offset project and to make available to the Department or its agent any and all documentation relating to the offset project at the Department's request. I submit to the legal jurisdiction of the Commonwealth of Pennsylvania."

(4) A certification signed by the project sponsor certifying that all offset projects for which the sponsor has received offset allowances under this subchapter or similar provisions in the rules of other participating states, under the sponsor's ownership or control or under the ownership or control of any entity which controls, is controlled by, or has common control with the sponsor are in compliance with all applicable requirements of the CO<sub>2</sub> Budget Trading Program in all participating states.

(5) A verification report and certification statement signed by an independent verifier accredited under § 145.396 that documents that the independent verifier has reviewed the monitoring and verification report and evaluated the following in relation to the applicable requirements at § 145.395, and any applicable guidance issued by the Department:

(i) The adequacy and validity of information supplied by the project sponsor to determine CO<sub>2</sub> emissions reductions or CO<sub>2</sub> sequestration pursuant to the applicable requirements at § 145.395.

(ii) The adequacy and consistency of methods used to quantify, monitor and verify CO<sub>2</sub> emissions reductions and CO<sub>2</sub> sequestration in accordance with the applicable requirements at § 145.395 and as outlined in the consistency application approved pursuant to § 145.394(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 under § 145.395.

(iv) Other evaluations and verification reviews as may be required by the Department.

(6) Disclosure of any voluntary or mandatory programs, other than the CO<sub>2</sub> Budget Trading Program, to which greenhouse gas emissions data related to the offset project has been or will be reported.

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

(e) *Prohibition against filing monitoring and verification reports in more than one participating state.* The Department will only accept a monitoring and verification report for an offset project that has received a consistency determination under § 145.394(e)(2) and will not accept a monitoring and verification report for an offset project that has received a consistency determination in other participating states.

(f) *Department action on monitoring and verification reports.*

(1) *Completeness determination.* A complete monitoring and verification report is one that is in an approved form and is determined by the Department to be complete for the purpose of commencing review of the monitoring and verification report. In no event shall a completeness determination prevent the Department from requesting additional information needed by the



Department to approve or deny a monitoring and verification report.

(2) *Consistency determination.* Within 45 days following receipt of a complete report, the Department will approve or deny a complete monitoring and verification report, in a format approved by the Department, filed with the Department pursuant to subsections (b) and (c).

### **CO<sub>2</sub> Allowance Auctions**

#### **Sec.**

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145.414.	Publication of auction results.

#### **§ 145.401. Auction of CO<sub>2</sub> allowances.**

(a) The Department will determine whether to participate in multistate CO<sub>2</sub> allowance auctions in coordination with other participating states or to conduct Pennsylvania-run auctions to sell CO<sub>2</sub> allowances allocated to the air pollution reduction account in accordance with §§ 145.341—145.343 and §§ 145.401-145.414.

(b) The Department may delegate the implementation and administrative support functions for any CO<sub>2</sub> allowance auction conducted under §§ 145.401-145.414 to an agent qualified to conduct auctions, including a regional entity, provided that the agent shall perform all functions under the direction and oversight of the Department.

(c) The Department will participate in a multistate CO<sub>2</sub> allowance auction if it determines that:

(1) A multistate auction capability and process is in place for the participating states.

(2) The multistate auction can provide benefits to Pennsylvania that meet or exceed the benefits conferred on Pennsylvania through its own Pennsylvania-run auction process.

(3) The multistate auction process would be consistent with the process described in §§ 145.401-145.414.

(d) Should the Department find that the conditions in subsection (c) have not been satisfied, the Department may conduct a Pennsylvania-run auction pursuant to §§ 145.341—145.343 and §§ 145.401-145.414 or may take another action as it deems appropriate.

(e) The Department will retain its authority to enforce compliance with all sections of this subchapter and will retain control over the proceeds associated with the sale of all of Pennsylvania CO<sub>2</sub> allowances, whether sold in a multistate or Pennsylvania CO<sub>2</sub> allowance auction and will credit the proceeds to the Clean Air Fund established pursuant to the act.

**§ 145.402. Auction format.**

(a) The format of a CO<sub>2</sub> allowance auction will be one or more of the following:

(1) Uniform-price sealed-bid.

(2) Discriminatory-price sealed-bid.

(3) Ascending price, multiple-round.

(4) Descending price, multiple-round.

(b) CO<sub>2</sub> allowances will be auctioned in lots of 1,000 CO<sub>2</sub> allowances, unless the volume of CO<sub>2</sub> allowances auctioned requires an individual lot size smaller than 1,000.

**§ 145.403. Auction timing and CO<sub>2</sub> allowance submission schedule.**

(a) A CO<sub>2</sub> allowance auction will be held no less frequently than annually, and as frequently as the Department determines is necessary and practical to ensure the availability of CO<sub>2</sub> allowances to CO<sub>2</sub> budget units and CO<sub>2</sub> budget sources and to support the effective functioning of the CO<sub>2</sub> allowance market.

(b) Prior to the end of each control period, the initial control period or an interim control period, the Department will make available for sale by auction, all CO<sub>2</sub> allowances held in the air pollution reduction account that are designated for the allocation years associated with that control period, initial control period or interim control period. This will not include CO<sub>2</sub> allowances set aside in the waste coal set-aside account under § 145.342(b) and (i).

(c) In each CO<sub>2</sub> allowance auction, the Department will make available for sale CO<sub>2</sub> allowances designated for the allocation years associated with that control period, interim control period or initial control period and CO<sub>2</sub> allowances designated for the allocation years associated with a future control period, in a number as determined to be appropriate by the Department, to ensure the availability of sufficient allowances to protect the financial stability of CO<sub>2</sub> budget sources in Pennsylvania.

(d) The number of CO<sub>2</sub> allowances to be made available for sale in a specific auction will be disclosed in the notice of CO<sub>2</sub> allowance auction issued under § 145.405.

(e) An auction of CO<sub>2</sub> allowances will include a CO<sub>2</sub> cost containment reserve and a CCR trigger price, as provided under § 145.342.

**§ 145.404. Reserve price.**

(a) The Department will establish a reserve price for each CO<sub>2</sub> allowance auction.

(b) The reserve price will be either the minimum reserve price or the CCR trigger price, as specified under §145.382, Table 1 and §§ 145.381—145.382.

**§ 145.405. Auction calendar and notice.**

(a) A calendar of anticipated auction dates will be available on the CO<sub>2</sub> allowance auction website, [www.rggi.org](http://www.rggi.org). The calendar will indicate the auction format and the number of allowances and allocation years of allowances to be auctioned at each auction. The calendar may periodically be revised, including the anticipated dates of future auctions, provided that the information relevant to the next scheduled CO<sub>2</sub> allowance auction will be fixed no later than 45 calendar days prior to the auction. The calendar will include the dates of at least the next four CO<sub>2</sub> allowance auctions and may also include the anticipated number of allowances to be auctioned at each future auction.

(b) A notice of each CO<sub>2</sub> allowance auction will be provided on the CO<sub>2</sub> allowance auction website no later than 45 days prior to the date upon which the auction will be conducted and may be transmitted electronically to parties requesting notification, provided they have submitted an e-mail address to the Pennsylvania RGGI program contact person. The RGGI program contact for each participating state, including Pennsylvania, is listed on the RGGI website at [www.rggi.org](http://www.rggi.org).

(c) In addition to the information specified at § 145.382(a), the notice of CO<sub>2</sub> allowance auction will include, but not be limited to, the following:

(1) The date, time and location of the CO<sub>2</sub> allowance auction, including the Internet address or electronic address for the CO<sub>2</sub> allowance auction location, as applicable.

(2) The format for the CO<sub>2</sub> allowance auction.

(3) The categories of bidders who will be eligible to bid.

(4) The number and allocation years of Pennsylvania CO<sub>2</sub> allowances to be auctioned.

(5) The minimum reserve price.

(6) All information regarding the CO<sub>2</sub> cost containment reserve, required to be in the notice pursuant to § 145.382(a)

(7) The procedures for conducting the CO<sub>2</sub> allowance auction, including the required bid submission format and process, and information regarding financial settling of CO<sub>2</sub> allowance payments.

(8) All CO<sub>2</sub> allowance auction participation requirements.

(9) The amount and type of financial security required and instructions for submitting acceptable financial surety.

(10) Participation limits, including bidding limits that may apply to an individual bidder or a group of related bidders.

(11) Application instructions for applying to participate in the CO<sub>2</sub> allowance auction.

(12) Identification of a Pennsylvania auction contact person for further information.

(13) Other pertinent rules or procedures of the auction as may be required to ensure a transparent, fair and competitive auction.

**§ 145.406. Auction participant requirements.**

(a) To be classified by the Department as a bidder eligible to participate in a specific CO<sub>2</sub> allowance auction, a qualified participant must meet the following:

(1) Be a member of a category of those eligible to participate in the specified CO<sub>2</sub> allowance action as indicated by the notice of CO<sub>2</sub> allowance auction issued under § 145.405(b).

(2) Open and maintain a compliance account or general account, established under § 145.351.

(3) Submit financial security, such as a bond, cash, certified funds or an irrevocable stand-by letter of credit, in a manner and form acceptable to the Department, as specified in the notice of CO<sub>2</sub> allowance auction issued under § 145.405(b).

(b) Only a person who meets the requirements under subsection (a) will be classified by the Department as a bidder and approved to participate in a specified CO<sub>2</sub> allowance auction.

**§ 145.407. Auction participant eligibility.**

(a) The Department will announce the categories of parties that are eligible to participate in a specific CO<sub>2</sub> allowance auction as part of the notice of CO<sub>2</sub> allowance auction, provided that an owner or operator of a CO<sub>2</sub> budget unit located in Pennsylvania is always eligible to participate in a CO<sub>2</sub> allowance auction.

(b) For any CO<sub>2</sub> allowance auction, the following categories of parties may be eligible to participate:

(1) The owner or operator of a CO<sub>2</sub> budget unit located in Pennsylvania who is always eligible to participate pursuant to subsection (a).

(2) The owner or operator of a CO<sub>2</sub> budget unit located in a participating state.

(3) The owner or operator of a CO<sub>2</sub> budget unit located outside of Pennsylvania, but within those states that have final CO<sub>2</sub> Budget Trading Program regulatory provisions in place at the time of the CO<sub>2</sub> allowance auction and are participating states.

(4) The owner of a fossil fuel-fired generation unit located outside of the participating states.

(5) A broker.

(6) An environmental group.

(7) A financial or investment institution.

(8) Any other market participant, as may be specified in the notice of CO<sub>2</sub> allowance auction, with or without limitation.

**§ 145.408. Auction participant qualification.**

(a) A person who intends to participate in a CO<sub>2</sub> allowance auction shall submit a qualification application to the Department, in the form and manner specified in the notice of the CO<sub>2</sub> allowance auction.

(b) The deadline for submitting a qualification application will be established in the notice of the CO<sub>2</sub> allowance auction and will be at least 15 days after the publication of the notice.

(c) As part of a qualification application, an applicant shall provide information and documentation relating to the applicant's ability and authority to execute bids and honor contractual obligations, as well as information required to ensure adherence to the auction requirements and procedures specified in §§ 145.401-145.414, as follows:

(1) Identification by the applicant of either a compliance account or general account established pursuant to § 145.351, and identification of the CO<sub>2</sub> authorized account representative for the compliance account or general account.

(2) Information and documentation regarding the corporate identity, ownership, affiliations and capital structure of the entity represented by the applicant.

(3) Identification of any indictment or felony conviction of the applicant or any member, director, principal, partner or officer of the entity represented by the applicant or any affiliate or related entity.

(4) Identification of any previous or pending investigation of the applicant or the entity represented by the applicant or any affiliate or related entity, with respect to any alleged violation of any rule, regulation or law associated with any commodity market or exchange.

(5) Other information and declarations as the Department determines may be required of an applicant to evaluate prospective auction participants and ensure the integrity of the CO<sub>2</sub> allowance auction process in accordance with the requirements and procedures for CO<sub>2</sub> allowance auctions established in this subchapter.

(d) The Department will determine whether a qualification application is complete, or incomplete, or otherwise deficient. If the Department determines that an application is incomplete or otherwise deficient, the applicant will be given a reasonable opportunity, and in no event less than 5 business days and no more than 10 business days, as specified in the notice of the CO<sub>2</sub> allowance auction, to provide additional information to the Department in order to complete the application or remedy any application deficiency.

(e) The Department will review a complete qualification application and make a determination as to whether the applicant is qualified to participate in the CO<sub>2</sub> allowance auction. The Department will make a determination as to the qualification status of the applicant by the deadline for the determination specified in the notice of the CO<sub>2</sub> allowance auction.

(f) The Department may deny qualification to an applicant based on information submitted in a qualification application to ensure the integrity of the CO<sub>2</sub> allowance auction process in accordance with the requirements and procedures for auctions established at § 145.406, § 145.407, § 145.409, § 145.410, and § 145.411.

(g) The Department may revoke the qualification status of a qualified participant, if they fail to comply with the applicable requirements of this subchapter, or if the Department determines that they have knowingly provided false or misleading information or withheld pertinent information from the qualification application submitted pursuant to subsection (a). The Department may also prohibit the qualified participant from participating in a future CO<sub>2</sub> allowance auction where the Department determines that the prior conduct could compromise the integrity of a subsequent CO<sub>2</sub> allowance auction.

(h) A qualified participant will remain qualified indefinitely to participate in all CO<sub>2</sub> allowance auctions after the Department's qualification determination, provided that there has been no material change to the information supplied to the Department in the qualification application submitted pursuant to subsection (a). If there is any material change to the information in the qualification application submitted pursuant to subsection (a), the qualification status will expire as of the date of the change, pending the submission of a new qualification application pursuant to subsection (a) and a determination by the Department that the applicant is qualified to participate in a CO<sub>2</sub> allowance auction.

(i) Prior to each CO<sub>2</sub> allowance auction, a qualified participant who intends to participate in the auction shall notify the Department, through a notice of intent to bid, that they intend to

participate in the upcoming CO<sub>2</sub> allowance auction. The notice shall be submitted to the Department by the same date as that required for submitting a qualification application established in the notice of the CO<sub>2</sub> allowance auction.

(j) As part of a notice of intent to bid submitted to the Department pursuant to subsection (i), a qualified participant shall notify the Department whether there has been any material change to the information supplied in the qualification application submitted pursuant to subsection (a).

**§ 145.409. Submission of financial security.**

(a) To participate in any specific CO<sub>2</sub> allowance auction, a qualified participant shall provide financial security to the Department, including a bond, cash, certified funds or an irrevocable stand-by letter of credit, in a form and manner prescribed by the Department in the notice of the CO<sub>2</sub> allowance auction.

(b) The Department will approve the qualified participant to participate as a bidder in the specified CO<sub>2</sub> allowance auction after the Department has approved the financial security submitted pursuant to subsection (a).

(c) A qualified participant who submits financial security may request return of the financial security at any time prior to or following any CO<sub>2</sub> allowance auction, subject to the following limitations:

(1) Any request for the return of financial security prior to the conduct of a CO<sub>2</sub> allowance auction will result in the Department revoking approval to participate in the CO<sub>2</sub> allowance auction, as of the date of the request.

(2) The Department will not return the financial security if the Department has any current or pending claim to the financial security as a result of the failure of the bidder to abide by the requirements of this subchapter or to pay the full amount of any submitted bid when payment is due.

(3) Financial security may be forfeited to the Department in the event the bidder's offer to purchase CO<sub>2</sub> allowances is accepted and the bidder fails to tender payment of the full amount when due.

**§ 145.410. Bidder limitations.**

(a) A bidder shall submit a bid in an amount that does not exceed the amount of financial security provided to the Department.

(b) A bidder, including any affiliate or agent of the bidder, or any combination of bidders with related beneficial interests, shall purchase no more than 25% of the CO<sub>2</sub> allowances offered for sale in any one CO<sub>2</sub> allowance auction. The limitation, which will not be increased by CCR allowances, will be published in the auction notice under § 145.405(b).

**§ 145.411. Bid submittal requirements.**

(a) All bids shall be submitted in a form and manner prescribed by the Department, which the Department will make available on the CO<sub>2</sub> allowance auction website, as appropriate.

(b) A bidder shall not use or employ any manipulative, misleading or deceptive practice in connection with its prequalification application or purchase of allowances from the Department, including, but not limited to, any practice that contravenes or violates any applicable Federal or participating state law, rules or regulation.

(c) A bid submitted at a CO<sub>2</sub> allowance auction is a binding offer for the purchase of CO<sub>2</sub> allowances.

**§ 145.412. Approval of auction results.**

(a) An independent 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 Department in accordance with professional auditing standards addressing whether the auction was conducted in accordance with the rules and procedures in the respective notice of CO<sub>2</sub> allowance auction. Upon receipt and approval by the Department of the report and upon payment in full by successful bidders, the Department shall transfer, or have transferred, the corresponding CO<sub>2</sub> allowances to each successful bidder's applicable compliance or general account.

(b) The Department will approve or disapprove the outcome of a CO<sub>2</sub> allowance auction following the completion of the auction, based on an evaluation, in consultation with an independent monitor, as provided under subsection (a), of whether the auction was conducted in accordance with the procedures and requirements under §§ 145.341—145.343 and §§ 145.401-145.414 and whether there was any indication of collusive behavior among auction participants or attempts at market manipulation that impacted the results of the auction.

(c) In advising the Department or its agent, the independent monitor will monitor each CO<sub>2</sub> allowance 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 auctions, including, but not limited to, collusion, market power or price manipulation.

(d) The independent monitor shall also monitor allowance market data and information known to the Department, including allowance transactions and associated pricing reported in COATS, 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 the CO<sub>2</sub> Budget Trading Program.

**§ 145.413. Award of CO<sub>2</sub> allowances to winning bidders.**



(a) Following the approval of the results of a CO<sub>2</sub> allowance auction by the Department pursuant to § 145.412 and the settlement of financial transactions by a winning bidder, the Department will award CO<sub>2</sub> allowances to the winning bidder in a number equal to the number of CO<sub>2</sub> allowances represented in winning bids submitted by the bidder.

(b) The Department will allocate CO<sub>2</sub> allowances to the compliance account or general account identified in the qualification application of a winning bidder, in a number equal to the CO<sub>2</sub> allowances awarded to the bidder pursuant to subsection (a).

**§ 145.414. Publication of auction results.**

(a) After the Department has approved the results of a CO<sub>2</sub> allowance auction pursuant to § 145.412, and no later than 10 days following the allocation of CO<sub>2</sub> allowances to the CO<sub>2</sub> compliance or general accounts of winning bidders pursuant to § 145.413, the Department will publish on the CO<sub>2</sub> allowance auction website the auction clearing price and the number of CO<sub>2</sub> allowances sold in the auction.