Revised Express Terms

Part 242 CO_2 Budget Trading Program

Subpart 242-1 CO_2 Budget Trading Program General Provisions

242-1.1 Purpose.

This Part establishes the New York State component of the CO_2 Budget Trading Program, which is designed to reduce anthropogenic emissions of CO_2, a greenhouse gas, from CO_2 budget sources in an economically efficient manner.

242-1.2 Definitions.

(a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Part 200 of this Title apply to this Part.

(b) For the purposes of this Part, the following specific definitions apply:

(1) 'Account number'. The identification number given by the department [or its agent] to each [CO_2 Allowance Tracking System] <u>COATS</u> account.

(2) 'Acid rain emissions limitation'. As defined in 40 CFR 72.2 (see Table 1, section 200.9 of this Title), a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Clean Air Act.

(3) ‘Acid Rain Program’. A multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and 40 CFR parts 72 through 78 (see Table 1, section 200.9 of this Title).

(4) ‘Administrator’. ‘Administrator’ means the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator’s authorized representative.

(5) ‘Allocate or allocation’. The determination by the department of the number of CO_2 allowances to be recorded in the compliance account of a CO_2 budget unit, an allocation set-aside account, or the energy efficiency and clean energy technology account. [, or the general account of the sponsor of an approved CO_2 emissions offset project.]

(6) ‘Allocation year’. A calendar year for which the department allocates [or awards] CO_2 allowances pursuant to Subpart[s] 242-5 [and 242-10] of this Part. The allocation year of each CO_2 allowance is reflected in the unique identification number given to the allowance pursuant to subdivision 242-6.4(b) of this Part.

(7) ‘Allowance auction or auction’. An auction in which the New York State Research and Development Authority (NYSERDA) [or its agent] offers CO_2 allowances for sale.

(8) ‘Attribute’. A characteristic, claim, credit, benefit, emissions reduction, offset, allowance, allocation, howsoever characterized, denominated, measured or entitled, associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.

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

(10) ‘Automated data acquisition and handling system or DAHS’. That component of the continuous emissions monitoring system, or other emissions monitoring system approved for use under Subpart 242-8 of this Part, 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 Subpart 242-8 of this Part.

[(11) ‘Award’. The determination by the Department of the number of CO_2 offset allowances to be recorded in the general account of a project sponsor pursuant to 242-10.7 of this Part. Award is a type of allocation.]

([12]11) ‘Boiler’. An enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

([13]12) ‘CO_2 allowance’. A limited authorization by the department or a participating state under the CO_2 Budget Trading Program to emit up to one ton of CO_2, subject to all applicable limitations contained in this Part. No provision of this regulation shall be construed to limit the authority of the department or a participating state to terminate or limit such authorization to emit. This limited authorization does not constitute a property right.

([14]13) ‘CO_2 allowance deduction or deduct CO_2 allowances’. The permanent withdrawal of CO_2 allowances by the [D]department [or its agent] from a [CO_2 allowance tracking system] COATS compliance account to account for the number of tons of CO_2 emitted from a CO_2 budget source for a control period or an

interim control period, determined in accordance with Subpart 242-8 of this Part, or for the forfeit or retirement of CO_2 allowances as provided by this Part.

([15]14) 'CO_2 allowances held [or hold CO_2 allowances]'. The CO_2 allowances recorded by the department [or its agent], or submitted to the department [or its agent] for recordation, in accordance with Subparts 242-6 and 242-7 of this Part, in a [CO_2 allowance tracking system] COATS account.

([16]15) 'CO_2 Allowance Tracking System (COATS)'. The system by which the department [or its agent] records allocations, deductions, and transfers of CO_2 allowances under the CO_2 Budget Trading Program. The tracking system may also be used to perform other administrative actions as required by the department to maintain the New York CO_2 Budget Trading Program. [to track CO_2 emissions offset projects, CO_2 allowance prices and emissions from affected sources, and to determine the New York CO_2 Budget Trading Program adjusted budget in accordance with section 242-5.2 of this Part.]

([17]16) 'CO_2 allowance tracking system (COATS) account'. An account in the [CO_2 Allowance Tracking System]COATS established by the department [or its agent] for purposes of recording the allocation, holding, transferring, or deducting of CO_2 allowances.

([18]17) 'CO_2 allowance transfer deadline'. [Midnight of the March 1st occurring after the end of the relevant control period and each relevant interim control period or, if that March 1st is not a business day, midnight of the first business day thereafter and is the deadline by which CO_2 allowances must be submitted for recordation in a CO_2 budget source's compliance account in order for the source to meet the CO_2 requirements of subdivision 242-1.5(c) of this Subpart for the control period and each interim control period immediately preceding such deadline.]The deadline by which CO_2 allowances must be submitted for recordation in a CO_2 budget source's compliance account in order for the source to meet the requirements of section 242-1.5(c) of this

Subpart for a control period or interim control period. Deadlines are at midnight of the March 1 occurring after the end of the relevant control period or interim control period. If the relevant March 1 is not a business day, the deadline is midnight of the first business day thereafter.

([19]18) 'CO_2 authorized account representative'. For a CO_2 budget source and each CO_2 budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Subpart 242-2 of this Part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the natural person who is authorized, under Subpart 242-6 of this Part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program or CSAPR SO_2 Group 2 Trading Program then, for a CO_2 Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.

([20]19) 'CO_2 authorized alternate account representative'. For a CO_2 budget source and each CO_2 budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Subpart 242-2 of this Part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the alternate natural person who is authorized, under Subpart 242-6 of this Part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program or CSAPR SO_2 Group 2 Trading Program then, for a CO_2 Budget Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.

([21]20) 'CO_2 budget emissions limitation'. For a CO_2 budget source, the tonnage equivalent, in CO_2 emissions in a control period or an interim control period, of the CO_2 allowances available for compliance deduction for the source for a control period or twice the CO_2 allowances available for an interim control period.

([22]21) 'CO_2 budget permit'. The portion of the legally binding permit issued by the department pursuant to Parts 201 and 621 of this Title to a CO_2 budget source or CO_2 budget unit which specifies all applicable CO_2 Budget Trading Program requirements.

([23]22) 'CO_2 budget source'. A source that includes one or more CO_2 budget units.

([24]23) 'CO_2 Budget Trading Program'. A multi-state CO_2 air pollution control and emissions reduction program established pursuant to this Part and corresponding regulations in other participating states as a means of reducing emissions of CO_2 from CO_2 budget sources.

[(25) 'CO_2 Budget Trading Program adjusted budget'. The New York CO_2 Budget Trading Program adjusted budget is determined in accordance with section 242-5.2 of this Part and is the annual amount of CO_2 tons available in New York for allocation in a given allocation year, in accordance with the CO_2 Budget Trading Program. CO_2 offset allowances allocated to project sponsors and CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the New York CO_2 Budget Trading Program adjusted budget.]

([26]24) 'CO_2 Budget Trading Program base budget'. The New York CO_2 Budget Trading Program base budget is specified in section 242-5.1 of this Part. [CO_2 offset allowances allocated to project sponsors and]CO_2 CCR tier 1 and CO_2 CCR tier 2 allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the CO_2 Budget Trading Program base budget.

([27]25) 'CO_2 budget unit'. A unit that is subject to the CO_2 Budget Trading Program requirements under section 242-1.4 of this Part.

([28]26) 'CO_2 cost containment reserve tier 1 allowance or CO_2 CCR tier 1 allowance'. A CO_2 allowance that is offered for sale at an auction by NYSERDA [or its agent] for the purpose of containing the cost of CO_2 [Allowances]allowances. CO_2 CCR tier 1 allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the CO_2 Budget Trading Program [base and adjusted]budget[s]. CO_2 CCR tier 1 allowances are subject to all applicable limitations contained in this Part and in 21 NYCRR Part 507.

(27) 'CO_2 cost containment reserve tier 2 allowance or CO_2 CCR tier 2 allowance'. A CO_2 allowance that is offered for sale at an auction by NYSERDA for the purpose of containing the cost of CO_2 allowances. CO_2 CCR tier 2 allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the CO_2 Budget Trading Program budget. CO_2 CCR tier 2 allowances are subject to all applicable limitations contained in this Part.

(28) 'CO_2 Cost containment reserve tier 1 trigger price, or CCR tier 1 trigger price'. The CCR tier 1 trigger price is the minimum price at which CO_2 CCR tier 1 allowances are offered for sale by NYSERDA at an auction. The CCR tier 1 trigger price shall be $19.50 per CO_2 allowance in calendar year 2027. Each calendar year thereafter, the CCR tier 1 trigger price shall be 1.07 multiplied by the CCR tier 1 trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 1.

Table 1. CCR Tier 1 Trigger Price.										
2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037

$19.50	$20.87	$22.33	$23.89	$25.56	$27.35	$29.26	$31.31	$33.50	$35.85	$38.36

(29) 'CO_2 cost containment reserve tier 2 trigger price, or CCR tier 2 trigger price'. The CCR tier 2 trigger price is the minimum price at which CO_2 CCR tier 2 allowances are offered for sale by NYSERDA at an auction. The CCR tier 2 trigger price shall be $29.25 per CO_2 allowance in calendar year 2027. Each calendar year thereafter, the CCR tier 2 trigger price shall be 1.07 multiplied by the CCR tier 2 trigger price from the previous calendar year, rounded to the nearest whole cent as shown in Table 2.

Table 2. CCR Tier 2 Trigger Price.

2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
$29.25	$31.30	$33.49	$35.83	$38.34	$41.02	$43.89	$46.96	$50.25	$53.77	$57.53

(30) 'CO_2 emissions offset project'. A historical project that allowed the department to determine how many CO_2 Offset Allowances to record to a sponsor's general account related to specific emission reductions outside of the electricity sector. These projects can no longer be approved for the CO_2 Budget trading program, but the CO_2 offset allowances created before January 1, 2027, are eligible to meet the compliance deduction as limited under section 242-6.5(a)(3) of this Part.

([29]31) 'CO_2 equivalent'. The quantity of a given greenhouse gas multiplied by its global warming potential (GWP).

([30]32) 'CO_2 offset allowance'. A CO_2 allowance that is [awarded] determined by the department to have been recorded, by a participating state prior to January 1, 2027, in the general account of [to]the sponsor

of a CO_2 emissions offset project [pursuant to section 242-10.7 of this Part]and is subject to the relevant compliance deduction limitations of paragraph 242-6.5(a)(3) of this Part.

([31]33) ‘Combined cycle system’. A system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

([32]34) ‘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.

([33]35) ‘Commence commercial operation’. With regard to a unit that serves a generator, to [have begun]begin to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO_2 budget unit under section 242-1.4 of this Subpart on the date the unit commences commercial operation, such date shall remain the unit’s date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under section 242-1.4 of this Subpart on the date the unit commences commercial operation, the date the unit becomes a CO_2 budget unit under section 242-1.4 of this Subpart shall be the unit’s date of commencement of commercial operation.

([34]36) ‘Commence operation’. To begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit’s combustion chamber. For a unit that is a CO_2 budget unit under section 242-1.4 of this Subpart on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under section 242-1.4 of this Subpart on the date of commencement of operation,

the date the unit becomes a CO_2 budget unit under section 242-1.4 of this Subpart shall be the unit's date of commencement of operation.

([35]37) ‘Compliance account’. A [CO_2 Allowance Tracking System] COATS account, established by the department [or its agent] for a CO_2 budget source under Subpart 242-6 of this Part, in which are held CO_2 allowances available for use by the source for a control period [and each]or interim control period for the purpose of meeting the CO_2 requirements of subdivision 242-1.5(c) of this Subpart.

([36]38) ‘Continuous emissions monitoring system or CEMS’. The equipment required under Subpart 242-8 of this Part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR part 75 (see Table 1, section 200.9 of this Title) and Subpart 242-8 of this Part. The following systems are types of continuous emissions monitoring systems required under Subpart 242-8 of this Part.

(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_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2; and NO_X 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) (see Table 1, section 200.9 of this Title) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(iv) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(v) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

([37]39) 'Control period'. The control period is a three-calendar-year time period. The first control period was from January 1, 2009 to December 31, 2011, inclusive. Each subsequent [sequential] three-calendar-year period is a separate control period. The first two calendar years of each control period are each defined as an interim control period, beginning on January 1, 2015.

[(38) 'CO_2 Cost containment reserve trigger price, or CCR trigger price'. The CCR trigger price is the minimum price at which CO_2 CCR allowances are offered for sale by NYSERDA or its agent at an auction. The CCR trigger price shall be $10.00 per CO_2 allowance in calendar year 2017. Each calendar year thereafter through 2020, the CCR trigger price shall be 1.025 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent. The CCR trigger price in calendar year 2021 shall be $13.00. Each calendar year thereafter, 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 below.]

[Table 1. CO_2 CCR Trigger Price												
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
$10.25	$10.51	$10.77	$13.00	$13.91	$14.88	$15.92	$17.03	$18.22	$19.50	$20.87	$22.33	$23.89]

[(39) 'CO_2 emissions containment reserve allowance or CO_2 ECR allowance'. A CO_2 allowance that is withheld from sale at an auction by NYSERDA or its agent pursuant to 21 NYCRR Part 507 for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

(40) 'CO_2 emissions containment reserve trigger price, or ECR trigger price'. The ECR trigger price is the price below which CO_2 allowances will be withheld from sale by NYSERDA or its agent at an auction pursuant to 21 NYCRR Part 507. The ECR trigger price in calendar year 2021 shall be $6.00. Each calendar year thereafter, 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_2 ECR trigger Price is repealed.

([41]<u>40</u>) 'Cross State Air Pollution Rule (CSAPR) NO_x Annual Trading Program'. A multi-state NO_x air pollution control and emission reduction program established in accordance with Subpart AAAAA of 40 CFR Part 97 and 40 CFR 52.38(a) (see Table 1, section 200.9 of this Title) (including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.38(a)(3) or (4) (see Table 1, section 200.9 of this Title) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.38(a)(5)) (see Table 1, section 200.9 of this Title), as a means of mitigating interstate transport of fine particulates and NO_x.

([42]<u>41</u>) 'Cross State Air Pollution Rule (CSAPR) NO_x Ozone Season Trading Program'. A multi-

state NO_x air pollution control and emission reduction program established in accordance with Subpart BBBBB of 40 CFR Part 97 and 40 CFR 52.38(b) (see Table 1, section 200.9 of this Title) (including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.38(b)(3) or (4) (see Table 1, section 200.9 of this Title) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.38(b)(5)) (see Table 1, section 200.9 of this Title), as a means of mitigating interstate transport of ozone and NO_x.

([43]42) 'Cross State Air Pollution Rule (CSAPR) SO_2 Group 1 Trading Program'. A multi-state SO_2 air pollution control and emission reduction program established in accordance with Subpart CCCCC of 40 CFR Part 97 and 40 CFR 52.39(a), (b), (d) through (f), (j), and (k) (see Table 1, section 200.9 of this Title) (including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.39(d) or (e) (see Table 1, section 200.9 of this Title) or that is established in a SIP revision approved by the Administrator under 40 CFR 52.39(f)) (see Table 1, section 200.9 of this Title), as a means of mitigating interstate transport of fine particulates and SO_2.

([44]43) 'Cross State Air Pollution Rule (CSAPR) SO_2 Group 2 Trading Program'. A multi-state SO_2 air pollution control and emission reduction program established in accordance with Subpart DDDDD of 40 CFR Part 97 and 40 CFR 52.39(a), (c), and (g) through (k) (see Table 1, section 200.9 of this Title) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under 40 CFR 52.39(g) or (h) (see Table 1, section 200.9 of this Title) of this chapter or that is established in a SIP revision approved by the Administrator under 40 CFR 52.39(i) (see Table 1, section 200.9 of this Title) of this chapter), as a means of mitigating interstate transport of fine particulates and SO_2.

[(45) 'Eligible biomass'. Eligible biomass includes sustainably harvested woody and herbaceous fuel sources that are available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, and forest and mill residue. Eligible

biomass may also include biogas derived from such fuel sources and animal wastes and other clean organic wastes not mixed with other solid waste. Liquid biofuels do not qualify as eligible biomass. Sustainably harvested as it applies to woody and herbaceous fuel sources will be determined by the department.]

([46]44) 'Energy efficiency and clean energy technology account'. A general account established and administered by NYSERDA.

([47]45) 'Excess emissions'. Any tonnage of CO_2 emitted by a CO_2 budget source during a control period that exceeds the CO_2 budget emissions limitation for the source.

([48]46) 'Excess interim emissions'. Any tonnage of CO_2 emitted by a CO_2 budget source during an interim control period that when multiplied by 0.50 [that]exceeds the CO_2 budget emissions limitation for the source.

[(49) 'First control period interim adjustment for banked allowances'. An adjustment applied to the New York CO_2 Budget Trading Program base budget for allocation years 2014 through 2020 to address the surplus allocation year 2009, 2010 and 2011 allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program, but not including accounts opened by participating states.]

([50]47) 'Fossil fuel'. Natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

([51]48) 'Fossil fuel-fired'. One of the following:

(i) With regard to a unit that commenced operation prior to January 1, 2005, the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 50 percent of the annual heat input on a Btu basis during any year; or

(ii) With regard to a unit that commenced or commences operation on or after January 1, 2005, the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than five percent of the annual heat input on a Btu basis during any year.

([52]49) 'General account'. A [CO_2 allowance tracking system] COATS account, established under Subpart 242-6 of this Part, that is not a compliance account.

[(53) 'Global warming potential (GWP)'. A measure of the radiative efficiency (heat-absorbing ability) of a particular gas relative to that of carbon dioxide (CO_2) after taking into account the decay rate of each gas (the amount removed from the atmosphere over a given number of years) relative to that of CO_2.]

([54]50) 'Gross generation'. The electrical output (in MWe) at the terminals of the generator.

([55]51) 'Interim control period'. An interim control period is a one-calendar-year time period, during each of the first and second calendar years of each three-[ ]year control period. The first interim control period starts on January 1, 2015 and ends on December 31, 2015, inclusive. The second interim control period starts on January 1, 2016 and ends on December 31, 2016, inclusive. Each successive three-[ ]year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

([56]52) 'Life-of-the-unit contractual arrangement'. A unit participation power sales agreement

under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and/or associated energy from any specified unit pursuant to a contract:

(i) for the life of the unit;

(ii) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

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

([57]53) 'Maximum potential hourly heat input'. An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of 40 CFR part 75 (see Table 1, section 200.9 of this Title) to report heat input, this value should be calculated, in accordance with 40 CFR part 75 (see Table 1, section 200.9 of this Title), using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR part 75 (see Table 1, section 200.9 of this Title), using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

([58]54) 'Minimum Reserve Price (MRP)'. The minimum reserve price in calendar year [2014]2027 shall be [$2.00]$9.00. Each calendar year thereafter the minimum reserve price shall be [1.025]1.07 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

Table 3. Minimum Reserve Price

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

([59]55) ‘Monitoring system’. Any monitoring system that meets the requirements of Subpart 242-8 of this Part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

([60]56) ‘Nameplate capacity’. The maximum electrical output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

([61]57) ‘Net electrical output’. All electrical output supplied to the electric power grid or gross generation minus the electrical output used on-site by the facility (in MWe). For co-generation facilities, all electrical output supplied to the electric power grid, the host site and other industrial and commercial customers, but excluding electrical output used by the co-generation facility and fuel handling and processing equipment.

([62]58) ‘Non-CO_2 budget unit’. A unit that does not meet the applicability criteria of section 242-1.4 of this Subpart.

(59) ‘North American Industry Classification System (NAICS) code(s)’. The six- digit code(s) that represent the product(s)/activity(s)/service(s) at a facility or supplier as defined in North American Industrial Classification System Manual 2022 (see Table 1, section 200.9 of this Title).

([63]60) ‘Operator’. Any person who operates, controls, or supervises a CO_2 budget unit or a CO_2

budget source [and shall include]including, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

([64]61) ‘Owner’. Any of the following persons:

(i) any holder of any portion of the legal or equitable title in a CO_2 budget unit; or

(ii) any holder of a leasehold interest in a CO_2 budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO_2 budget unit; or

(iii) any purchaser of power from a CO_2 budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

(iv) with respect to any general account, any person who has an ownership interest with respect to the CO_2 allowances held in the general account and who is subject to the binding agreement for the CO_2 authorized account representative to represent that person's ownership interest with respect to the CO_2 allowances.

([65]62) ‘Participating state’. A state that has established a corresponding regulation as part of the CO_2 Budget Trading Program.

([66]63) ‘Primary fuel’. Of the different fuels used, the fuel to which the highest proportion of the heat input is attributable.

([67]64) ‘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.

([68]65) ‘Recordation, record, or recorded’. With regard to CO_2 allowances, the movement of CO_2 allowances by the department [or its agent] from one [CO_2 allowance tracking system] COATS account to another, for purposes of allocation, transfer, or deduction.

([69]66) ‘Reserve Price’. The minimum acceptable price for each CO_2 allowance in a specific auction. The reserve price at an auction is either the minimum reserve price, the CCR tier 1 trigger price, or the CCR tier 2 trigger price as specified in section 242-5.3(b) of this Part and in 21 NYCRR Part 507.

[(70) ‘Second control period adjustment for banked allowances’. An adjustment applied to the New York CO_2 Budget Trading Program base budget for allocation years 2015 through 2020 to address the surplus allocation year 2012 and 2013 allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of 2012 and 2013 emissions from all CO_2 budget sources in all the participating states.]

([71]67) ‘Serial number’. When referring to CO_2 allowances, the unique identification number assigned to each CO_2 allowance by the department [or its agent] under subdivision 242-6.4(b) of this Part.

([72]68) ‘Source’. Any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant. A “source,”

including a “source” with multiple units, shall be considered a single “facility.”

([73]69) ‘State’. A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

([74]70) ‘Submit or serve’. To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(i) in person;

(ii) by United States Postal Service; or

(iii) by other means of dispatch or transmission and delivery.

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

[(75) ‘Third adjustment for banked allowances’. An adjustment applied to the New York State CO_2 Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO_2 budget sources in all of the participating states at the end of the fourth control period in 2020 and as reflected in the CO_2 Allowance Tracking System on March 15, 2021.]

([76]71) ‘Ton or tonnage’. Any “short ton”, or 2,000 pounds. For the purpose of determining compliance with the CO_2 requirements of subdivision 242-1.5(c) of this Subpart, total tons for a control period

and each interim control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with Subpart 242-8 of this Part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.

([77]72) 'Total net output'. The total net megawatt hours, calculated utilizing the following formula:

Total net output = (EO + (TO/3.413)

Where:

"EO" is the total net electrical output from the CO_2 budget unit in MWh;

"TO" is the total useful thermal energy from the CO_2 budget unit in MMBtu;

"3.413" is the factor used to convert useful thermal energy from MMBtu to MWh, 3.413 MMBtu = 1 MWh.

([78]73) 'Undistributed CO_2 allowance'. CO_2 allowances originally allocated to a set-aside account pursuant to section 242-5.3 that were not distributed.

([79]74) 'Unit'. A fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

([80]75) 'Unit operating day'. A calendar day in which a unit combusts any fuel.

([81]76) 'Unsold Allowance'. A CO_2 allowance that has been made available for sale in an auction, conducted by NYSERDA [or its agent] pursuant to 21 NYCRR Part 507, but not sold.

([82]77) ‘Voluntary renewable energy purchase’. A purchase of electricity from renewable energy generation or renewable energy attribute credits by a retail electricity customer on a voluntary basis. Renewable energy includes electricity generated from a source built on or after January 1, 2003 that meets the definition of “renewable energy systems” pursuant to Public Service Law [Section]section 66-p(1)([p]b). The renewable energy generation or renewable energy attribute credits related to such purchases may not be used by the generator or purchaser to meet any regulatory mandate, such as a clean energy standard.

242-1.3 Measurements, abbreviations and acronyms.

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

(a) Btu-British thermal unit.

(b) CO_2-carbon dioxide.

(c) COATS-CO_2 allowance tracking system

([c]d) hr-hour.

([d]e) lb-pound.

([e]f) mmBtu-million Btu.

([f]g) MWe-megawatt electrical.

([g]h) MWh-megawatt hours.

242-1.4 Applicability.

(a) ‘Units’.

(1) Any unit that, at any time on or after January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO_2 budget unit, and any source that includes one or more such units shall be a CO_2 budget source, subject to the requirements of this Part[; and].

(2) Any unit that, at any time on or after January 1, 2021, serves an electricity generator with a nameplate capacity equal to or greater than 15 MWe shall be a CO_2 budget unit if either: (i) that unit resides at a CO_2 budget source; or (ii) that unit resides at a source where there are two or more units with a nameplate capacity equal to or greater than 15 MWe. Any source that includes one or more such units shall be a CO_2 budget source, subject to the requirements of this Part.

(b) ‘Limited exemption for units, subject under paragraph (a)(1) of this section, with electrical output to the electric grid restricted by permit conditions’.

(1) ‘Applicability’. Notwithstanding paragraph (a)(1) of this section, any unit that, on or before December 1, 2008, applied for an enforceable permit condition restricting the supply of the unit’s annual electrical output to the electric grid to less than or equal to 10 percent of the annual gross generation of the unit, and that from and after January 1, 2009 complies with the 10 percent restriction and the provisions in paragraph (3) of this subdivision, shall be exempt from the requirements of this Part, except for the provisions of this section, sections 242-1.2, 242-1.3, and 242-1.6 of this Subpart.

(2) ‘Effective date’. The exemption under paragraph (1) of this subdivision shall become effective as of January 1, 2009 and remain in effect unless and until the unit loses its exemption under subparagraph (3)(v) of this subdivision.

(3) ‘Compliance’.

(i) A unit exempt under paragraph (1) of this subdivision shall comply with the restriction on percentage of annual gross generation that may be supplied to the electric grid described in paragraph (1) of this subdivision.

(ii) A unit exempt under paragraph (1) of this subdivision shall report to the department the amount of annual gross generation and the amount of annual gross generation supplied to the electric grid during the year by the following February 1st.

(iii) For a period of 10 years from the date the records are created, the owners and operators of a unit exempt under paragraph (1) of this subdivision shall retain, at the source that includes the unit, records demonstrating that the conditions of the permit under paragraph (1) of this subdivision were met. The 10-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the department. The owners and operators bear 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.

(iv) The owners and operators and, to the extent applicable, the CO_2 authorized account representative of a unit exempt under paragraph (1) of this subdivision shall comply with all the requirements of this Part concerning all time periods for which the exemption is not in effect, even if such requirements arise, or

must be complied with, after the exemption takes effect.

(v) On the earlier of the following dates, a unit exempt under paragraph (1) of this subdivision shall lose its exemption:

(a) the date on which the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in paragraph (1) of this subdivision is removed from the unit's permit or otherwise becomes no longer applicable in any year that commences on or after January 1, 2009; or

(b) the first date on which the unit fails to comply, or on which the owners and operators fail 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 paragraph (1) of this subdivision during any year that commences on or after January 1, 2009.

(vi) A unit that loses its exemption in accordance with subparagraph (v) of this paragraph shall be subject to the requirements of this Part. For the purpose of applying permitting requirements under Subpart 242-3 of this Part, allocating allowances under Subpart 242-5 of this Part, and applying monitoring requirements under Subpart 242-8 of this Part, the unit shall be treated as commencing operation on the date the unit loses its exemption.

(c) 'Limited exemption for units, subject under paragraph (a)(2) of this section, with electrical output to the electric grid restricted by permit conditions'.

(1) 'Applicability'. Notwithstanding paragraph (a)(2) of this section, any unit that meets the following conditions shall be exempt from the requirements of this Part, except for the provisions of this section and sections 242-1.2, 242-1.3, and 242-1.6 of this Subpart.

(i) the unit would otherwise be subject to this Part pursuant to paragraph (a)(2) of this section;

(ii) on or before December 1, 2020, the unit applied for an enforceable permit condition restricting the supply of the unit's annual electrical output to the electric grid to less than or equal to 10 percent of the annual gross generation of the unit; and

(iii) from and after January 1, 2021, the unit complies with the 10 percent restriction and the provisions in paragraph (3) of this subdivision.

(2) 'Effective date'. The exemption under paragraph (1) of this subdivision shall become effective as of January 1, 2021, and remain in effect unless and until the unit loses its exemption under subparagraph (3)(v) of this subdivision.

(3) 'Compliance'.

(i) A unit exempt under paragraph (1) of this subdivision shall comply with the restriction on percentage of annual gross generation that may be supplied to the electric grid described in paragraph (1) of this subdivision.

(ii) A unit exempt under paragraph (1) of this subdivision shall report to the department the amount of annual gross generation and the amount of annual gross generation supplied to the electric grid during the year by the following February 1st.

(iii) For a period of 10 years from the date the records are created, the owners and operators of a unit exempt under paragraph (1) of this subdivision shall retain, at the source that includes the unit, records demonstrating that the conditions of the permit under paragraph (1) of this subdivision were met. The 10-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the department. The owners and operators bear 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.

(iv) The owners and operators and, to the extent applicable, the CO_2 authorized account representative of a unit exempt under paragraph (1) of this subdivision shall comply with all the requirements of this Part concerning all time periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(v) On the earlier of the following dates, a unit exempt under paragraph (1) of this subdivision shall lose its exemption:

(a) the date on which the restriction on the percentage of annual gross generation that may be supplied to the electric grid described in paragraph (1) of this subdivision is removed from the unit's permit or otherwise becomes no longer applicable in any year that commences on or after January 1, 2021; or

(b) the first date on which the unit fails to comply, or on which the owners and operators fail 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 paragraph (1) of this subdivision during any year that commences on or after January 1, 2021.

(vi) A unit that loses its exemption in accordance with subparagraph (v) of this paragraph

shall be subject to the requirements of this Part. For the purpose of applying permitting requirements under Subpart 242-3 of this Part, allocating allowances under Subpart 242-5 of this Part, and applying monitoring requirements under Subpart 242-8 of this Part, the unit shall be treated as commencing operation on the date the unit loses its exemption.

242-1.5 Standard requirements.

(a) 'Permit requirements'.

(1) Each CO_2 budget source is required to modify its permit pursuant to Parts 201 and 621 of this Title to include all applicable requirements of the CO_2 Budget Trading Program

(2) The owners and operators of each CO_2 budget source required to have an operating permit pursuant to Part 201 of this Title and each CO_2 budget unit required to have an operating permit pursuant to Part 201 of this Title for the source shall have a CO_2 budget permit and operate the CO_2 budget source and the CO_2 budget unit at the source in compliance with such CO_2 budget permit.

(b) 'Monitoring requirements'.

(1) The owners and operators and, to the extent applicable, the CO_2 authorized account representative of each CO_2 budget source and each CO_2 budget unit at the source shall comply with the monitoring requirements of Subpart 242-8 of this Part.

(2) The emissions measurements recorded and reported in accordance with Subpart 242-8 of this Part shall be used to determine compliance by the unit with the CO_2 requirements under subdivision (c) of this section.

(c) ‘CO_2 requirements’.

(1) The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under section 242-6.5 of this Part, as of the CO_2 allowance transfer deadline, in the source’s compliance account in an amount not less than the total number of tons of CO_2 emissions for the control period from all CO_2 budget units at the source, less the CO_2 allowances deducted to meet the requirements of paragraph (2) of this subdivision with respect to the previous two interim control periods, as determined in accordance with Subparts 242-6 and 242-8 of this Part.

(2) The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under section 242-6.5 of this Part, as of the CO_2 allowance transfer deadline, in the source’s compliance account in an amount not less than 0.50 times the total number of tons of CO_2 emissions for the interim control period from all CO_2 budget units at the source[multiplied by 0.50], as determined in accordance with Subparts 242-6 and 242-8 of this Part.

(3) Each ton of CO_2 emitted in excess of the CO_2 budget emissions limitation for a control period shall constitute a separate violation of this Part and applicable state law.

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

(5) A CO_2 budget unit shall be subject to the requirements under paragraph (1) of this subdivision starting on the later, of January 1, 2009, or the date on which the unit commences operation.

(6) CO_2 allowances shall be held in, deducted from, or transferred among [CO_2 allowance tracking system] COATS accounts in accordance with Subparts 242-5, 242-6, and 242-7[, and section 242-10.7] of this Part.

(7) A CO_2 allowance shall not be deducted, in order to comply with the requirements under paragraph (1) or (2) of this subdivision, for a control period or interim control period that ends prior to the allocation year for which the CO_2 allowance was allocated. A CO_2 offset allowance shall not be deducted, in order to comply with the requirements under paragraph (1) or (2) of this subdivision, beyond the applicable percent limitations set out in paragraph 242-6.5(a)(3) of this Part.

(8) A CO_2 allowance under the CO_2 Budget Trading Program is a limited authorization by the [D]department or a participating state to emit one ton of CO_2 in accordance with the CO_2 Budget Trading Program. No provision of the CO_2 Budget Trading Program, the CO_2 budget permit application, or the CO_2 budget permit or any provision of law shall be construed to limit the authority of the [D]department or a participating state to terminate or limit such authorization.

(9) A CO_2 allowance under the CO_2 Budget Trading Program does not constitute a property right.

(d) 'Excess emissions requirements'. The owners and operators of a CO_2 budget source that has excess emissions in any control period, or excess interim emissions for any interim control period shall:

(1) forfeit the CO_2 allowances required for deduction under paragraph 242-6.5(d)(1) of this Part, provided CO_2 offset allowances may not be used to cover any part of such excess emissions; and

(2) pay any fine, penalty, or assessment or comply with any other remedy imposed under paragraph

242-6.5(d)(2) of this Part.

(e) ‘Recordkeeping and reporting requirements’.

(1) Unless otherwise provided, the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the department.

(i) The account certificate of representation for the CO_2 authorized account representative for the source and each CO_2 budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with section 242-2.4 of this Part, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation.

(ii) All emissions monitoring information, in accordance with Subpart 242-8 of this Part and 40 CFR 75.57 (see Table 1, section 200.9 of this Title).

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO_2 Budget Trading Program.

(iv) Copies of all documents used to complete a CO_2 budget permit application and any other submission under the CO_2 Budget Trading Program or to demonstrate compliance with the requirements of the CO_2 Budget Trading Program.

(2) The CO_2 authorized account representative of a CO_2 budget source and each CO_2 budget unit at the source shall submit the reports and compliance certifications required under the CO_2 Budget Trading Program, including those under Subpart 242-4 of this Part.

(f) 'Liability'.

(1) No permit revision shall excuse any violation of the requirements of the CO_2 Budget Trading Program that occurs prior to the date that the revision takes effect.

(2) Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget source (including a provision applicable to the CO_2 authorized account representative of a CO_2 budget source) shall also apply to the owners and operators of such source and of the CO_2 budget units at the source.

(3) Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget unit (including a provision applicable to the CO_2 authorized account representative of a CO_2 budget unit) shall also apply to the owners and operators of such unit.

(g) 'Effect on other authorities'.

(1) No provision of the CO_2 Budget Trading Program, [a] CO_2 budget permit application, or [a] CO_2 budget permit, shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO_2 authorized account representative of a CO_2 budget source or CO_2 budget unit from compliance with any other provisions of applicable State and Federal laws and regulations.

242-1.6 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CO_2 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_2 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_2 Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

242-1.7 Severability.

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

Subpart 242-2 CO_2 Authorized Account Representative for CO_2 Budget Sources

242-2.1 Authorization and responsibilities of the CO_2 authorized account representative.

(a) Except as provided under section 242-2.2 of this Part, each CO_2 budget source, including all CO_2 budget units at the source, shall have one and only one CO_2 authorized account representative, with regard to all matters under the CO_2 Budget Trading Program concerning the source or any CO_2 budget unit at the source.

(b) The CO_2 authorized account representative of the CO_2 budget source shall be selected by an agreement binding on the owners and operators of the source and all CO_2 budget units at the source and must act in accordance with the certificate of representation under section 242-2.4.

(c) Upon receipt by the department [or its agent] of a complete account certificate of representation under section 242-2.4 of this Subpart, the CO_2 authorized account representative of the source shall represent and, by [his or her]their representations, actions, inactions, or submissions, legally bind each owner and operator of the CO_2 budget source represented and each CO_2 budget unit at the source in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO_2 authorized account representative by the department or a court regarding the source or unit.

(d) No CO_2 budget permit shall be issued, and no [CO_2 allowance tracking system] COATS account shall be established for a CO_2 budget source, until the department [or its agent] has received a complete account certificate of representation under section 242-2.4 of this Subpart for a CO_2 authorized account representative of the source and the CO_2 budget units at the source.

(e) Each submission under the CO_2 Budget Trading Program shall be submitted, signed, and certified by the CO_2 authorized account representative for each CO_2 budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO_2 authorized account representative: “I am authorized to make this submission on behalf of the owners and operators of the CO_2 budget sources or CO_2 budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and

complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(f) The department [or its agent] will accept or act on a submission made on behalf of owners or operators of a CO_2 budget source or a CO_2 budget unit only if the submission has been made, signed, and certified in accordance with subdivision (e) of this section.

242-2.2 CO_2 authorized alternate account representative.

(a) An account certificate of representation may designate one and only one CO_2 authorized alternate account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the CO_2 authorized alternate account representative is selected shall include a procedure for authorizing the CO_2 authorized alternate account representative to act in lieu of the CO_2 authorized account representative.

(b) Upon receipt by the department [or its agent] of a complete account certificate of representation under section 242-2.4 of this Subpart, any representation, action, inaction, or submission by the CO_2 authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

(c) Except in this section and subdivision 242-2.1(a), sections 242-2.3, 242-2.4 of this Subpart, and section 242-6.2 of this Part, whenever the term "CO_2 authorized account representative" is used in this Part, the term shall be construed to include the CO_2 authorized alternate account representative.

242-2.3 Changing the CO_2 authorized account representative and the CO_2 authorized alternate account

representative; changes in the owners and operators.

(a) ‘Changing the CO_2 authorized account representative’. The CO_2 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 section 242-2.4 of this Subpart. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative or CO_2 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_2 authorized account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

(b) ‘Changing the CO_2 authorized alternate account representative’. The CO_2 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 section 242-2.4 of this Subpart. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative or CO_2 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_2 authorized alternate account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

(c) ‘Changes in the owners and operators’.

(1) In the event a new owner or operator of a CO_2 budget source or a CO_2 budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any CO_2

authorized alternate account representative of the source or unit, and the decisions, orders, actions, and inactions of the department, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CO_2 budget source or a CO_2 budget unit, including the addition of a new owner or operator, the CO_2 authorized account representative or CO_2 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.

242-2.4 Account certificate of representation.

(a) A complete account certificate of representation for a CO_2 authorized account representative or a CO_2 authorized alternate account representative shall include the following elements in a format prescribed by the department [or its agent]:

(1) identification of the CO_2 budget source and each CO_2 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_2 authorized account representative and any CO_2 authorized alternate account representative;

(3) a list of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source;

(4) the following certification statement by the CO_2 authorized account representative and any CO_2 authorized alternate account representative: “I certify that I was selected as the CO_2 authorized account

representative or alternate CO_2 authorized account representative, as applicable, by an agreement binding on the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department or a court regarding the source or unit."; and

(5) the signature of the CO_2 authorized account representative, any CO_2 authorized alternate account representative and the dates signed.

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

242-2.5 Objections concerning the CO_2 authorized account representative.

(a) Once a complete account certificate of representation under section 242-2.4 of this Subpart has been submitted and received, the department [and its agent] will rely on the account certificate of representation unless and until the department [or its agent] receives a superseding complete account certificate of representation under section 242-2.4 of this Subpart.

(b) Except as provided in subdivision 242-2.3(a) or (b) of this Subpart, 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_2 authorized account representative shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or the finality of any decision or order by the department [or its agent] under the CO_2 Budget Trading Program.

(c) [Neither t]The department [nor its agent] will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CO_2 authorized account representative, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

242-2.6 Delegation by CO_2 authorized account representative and CO_2 authorized alternate account representative

(a) A CO_2 authorized account representative may delegate, to one or more natural persons, [his or her]their authority to make an electronic submission to the department [or its agent] under this Part.

(b) A CO_2 authorized alternate account representative may delegate, to one or more natural persons, [his or her]their authority to make an electronic submission to the department [or its agent] under this Part.

(c) In order to delegate authority to make an electronic submission to the department [or its agent] in accordance with subdivision (a) and (b) of this section, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, must submit to the department [or its agent] a notice of delegation, in a format prescribed by the department that includes the following elements:

(1) The name, address, e-mail address, and telephone number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;

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

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

(4) The following certification statements by such CO_2 authorized account representative or CO_2 authorized alternate account representative:

(i) "I agree that any electronic submission to the department [or its agent] that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made [when]while I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subdivision (d) of this section shall be deemed to be an electronic submission by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under subdivision (d) of this section, 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 section 242-2.6 is terminated."

(d) A notice of delegation submitted under subdivision (c) of this section shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department [or its agent] and until receipt by the department [or its agent] of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized

alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in subparagraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under subdivision (d) of this section shall be deemed to be an electronic submission by the CO_2 authorized account representative or CO_2 authorized alternate account representative submitting such notice of delegation.

(f) A CO_2 authorized account representative may delegate, to one or more natural persons, [his or her]their authority to review information in the [CO_2 allowance tracking system] COATS under this Part.

(g) A CO_2 authorized alternate account representative may delegate, to one or more natural persons, [his or her]their authority to review information in the [CO_2 allowance tracking system] COATS under this Part.

(h) In order to delegate authority to review information in the [CO_2 allowance tracking system] COATS in accordance with subdivision (f) and (g) of this section, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, must submit to the [D]department [or its agent] a notice of delegation, in a format prescribed by the [D]department that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;

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

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

(4) The following certification statements by such CO_2 authorized account representative or CO_2 authorized alternate account representative:

(i) "I agree that any information that is reviewed by a natural person identified in this notice of delegation and of a type listed for such information accessible by the reviewer in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subdivision 242-2.6(i) shall be deemed to be a reviewer by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under subdivision 242-2.6(i), I agree to maintain an e-mail account and to notify the [D]department [or its agent] immediately of any change in my e-mail address unless all delegation of authority by me under section 242-2.6 is terminated."

(i) A notice of delegation submitted under subdivision (h) of this section shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the [D]department [or its agent] and until receipt by the [D]department [or its agent] of a superseding notice of delegation by such CO_2 authorized account representative or CO_2 authorized alternate account representative as appropriate. The superseding notice of delegation may replace any previously identified reviewer, add a reviewer, or eliminate entirely any delegation of authority.

Subpart 242-3 Permits

242-3.1 General CO_2 budget permit requirements.

(a) Each CO_2 budget source must have a permit issued by the department pursuant to Parts 201 and 621 of this Title.

(b) Each CO_2 budget permit shall contain all applicable CO_2 Budget Trading Program requirements and which shall be a complete and distinguishable portion of the permit under subdivision (a) of this section.

242-3.2 Submission of CO_2 budget permit applications.

For any CO_2 budget source, the CO_2 authorized account representative shall submit a complete application for a facility operating permit or a modification to an existing facility operating permit in accordance with the provisions of Parts 201 and 621 of this Title and the requirements under section 242-3.3 of this Part.

242-3.3 Information requirements for CO_2 budget permit applications.

(a) A complete CO_2 budget permit application shall include the following elements concerning the CO_2 budget source for which the application is submitted, in a format prescribed by the department:

(1) The information required in Part 201 of this Title shall be included in the CO_2 Budget permit application by the owner and/or operator of the CO_2 budget source. Applications for modifications and revisions generally need only supply information related to the proposed change, provided such information includes a complete set of data on any emissions units affected by the modification and any facility level information

required in forms developed by the department to properly ascertain the nature and extent of the modification.

(2) identification of the CO_2 budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable;

(3) identification of each CO_2 budget unit at the CO_2 budget source.

Subpart 242-4 Compliance Certification

242-4.1 Compliance certification report.

(a) 'Applicability and deadline'. For each control period in which a CO_2 budget source is subject to the CO_2 requirements of subdivision 242-1.5(c) of this Part, the CO_2 authorized account representative of the source shall submit to the department by the March 1st following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.

(b) 'Contents of report'. The CO_2 authorized account representative shall include in the compliance certification report under subdivision (a) of this section the following elements, in a format prescribed by the department:

(1) identification of the source and each CO_2 budget unit at the source;

(2) at the CO_2 authorized account representative's option, the serial numbers of the CO_2 allowances

that are to be deducted from the source's compliance account under section 242-6.5 of this Part for the control period, including the serial numbers of any CO_2 offset allowances that are to be deducted subject to the limitations of paragraph 242-6.5(a)(3) of this Part; and

(3) the compliance certification under subdivision (c) of this section.

(c) 'Compliance certification'. In the compliance certification report under subdivision (a) of this section, the CO_2 authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO_2 budget units at the source in compliance with the CO_2 Budget Trading Program, whether the source and each CO_2 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_2 Budget Trading Program, including:

(1) whether the source was operated in compliance with the CO_2 requirements of subdivision 242-1.5(c) of this Part;

(2) whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO_2 emissions to the unit, in accordance with Subpart 242-8 of this Part;

(3) whether all the CO_2 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 Subpart 242-8 of this Part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(4) whether the facts that form the basis for certification under Subpart 242-8 of this Part of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Subpart 242-8 of this Part, if any, have changed; and

(5) if a change is required to be reported under paragraph (4) of this subdivision, 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.

242-4.2 Department's action on compliance certifications.

(a) The department [or its agent] may review and conduct independent audits concerning any compliance certification or any other submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The department [or its agent] may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under subdivision (a) of this section.

Subpart 242-5 CO_2 Allowance Allocations.

242-5.1 CO_2 Budget Trading Program base budget.

Subdivisions of section 5.1 have been repealed and replaced with the following text:

(a) For the 2027 allocation year, the CO_2 Budget Trading Program base budget is 21,914,493 tons.

(b) For the 2028 allocation year, the CO_2 Budget Trading Program base budget is 19,175,182 tons.

(c) For the 2029 allocation year, the CO_2 Budget Trading Program base budget is 16,435,870 tons.

(d) For the 2030 allocation year, the CO_2 Budget Trading Program base budget is 13,696,558 tons.

(e) For the 2031 allocation year, the CO_2 Budget Trading Program base budget is 10,957,246 tons.

(f) For the 2032 allocation year, the CO_2 Budget Trading Program base budget is 8,217,935 tons.

(g) For the 2033 allocation year, the CO_2 Budget Trading Program base budget is 5,478,623 tons.

(h) For the 2034 allocation year, the CO_2 Budget Trading Program base budget is 4,695,963 tons.

(i) For the 2035 allocation year, the CO_2 Budget Trading Program base budget is 3,913,302 tons.

(j) For the 2036 allocation year, the CO_2 Budget Trading Program base budget is 3,130,642 tons.

(k) For the 2037 allocation year and each succeeding allocation year, the CO_2 Budget Trading Program base budget is 2,347,982 tons.

Section 5.2 is repealed and replaced with the following text:

242-5.2 RESERVED

242-5.3 CO_2 allowance allocations.

(a) 'Energy efficiency and clean energy technology account'. The department will allocate the CO_2 Budget Trading Program [adjusted]base budget to best achieve the emissions reduction goals of the CO_2 Budget Trading Program by promoting or rewarding investments in energy efficiency, renewable or non-carbon-emitting technologies, and/or innovative carbon emissions abatement technologies with significant carbon reduction potential, in support of the statewide goal of the CLCPA that 40%, and requirement that no less than 35%, of the overall benefits from such investments be realized in disadvantaged communities (DACs).

(1) NYSERDA will establish and administer the energy efficiency and clean energy technology account pursuant to 21 NYCRR Part 507.

(2) The department will allocate most of the CO_2 Budget Trading Program base budget [or adjusted budget]to the energy efficiency and clean energy technology account.

(3) NYSERDA will administer the energy efficiency and clean technology account so that allowances will be sold in a transparent allowance auction or auctions. The proceeds of the auction or auctions will be used to promote the purposes of the energy efficiency and clean energy technology account and for administrative costs associated with the CO_2 Budget Trading Program. The auction will be carried out to achieve the following objectives: achieve fully transparent and efficient pricing of allowances; promote a liquid allowance market by making entry and trading as easy and low-cost as possible; be open to participation by the categories of bidders determined by NYSERDA [or its designee] in consultation with the Auction Advisory Committee which meet the minimum financial requirements; monitor for and guard against the exercise of market power and market manipulation; be held as frequently as is needed to achieve design objectives; avoid interference with existing allowance markets; align well with wholesale energy and capacity markets; and be designed to not act as

a barrier to efficient investment in [relatively] clean existing or new electricity generating sources.

(i) NYSERDA [, or its agent,] will not be obligated to sell any CO_2 allowances for less than the reserve price.

(ii) The department [or its agent] may retire unsold CO_2 allowances at the end of each control period.

(iii) The department [or its agent] may retire undistributed CO_2 allowances at the end of each control period.

(b) 'Cost Containment Reserve (CCR) allocation and rules for the sale of CO_2 CCR allowances'. The department shall allocate CO_2 CCR tier 1 and CO_2 CCR tier 2 allowances, separate from and additional to the CO_2 Budget Trading Program base budget set forth in section 242-5.1 of this Subpart, to the energy efficiency and clean energy technology account. The CCR tier 1 and CO_2 CCR tier 2 allocation is for the purpose of containing the cost of CO_2 allowances.

(1) The department shall allocate CO_2 CCR allowances in the following manner:

[(i) The department shall initially allocate 1,946,639 CO_2 CCR allowances for allocation year 2014.

(ii) On or before January 1, 2015 and each calendar year thereafter through 2020, the department shall allocate CO_2 CCR allowances in an amount equal to 3,893,277, minus the number of CO_2 CCR

allowances that remain in the energy efficiency and clean energy technology account at the end of the prior calendar year.]

(i[ii]) On or before January 1, [2021]2027 and each calendar year thereafter, the department shall allocate 3,687,535 CO_2 CCR tier 1 and 3,687,535 CO_2 CCR tier 2 allowances[in an amount equal to the quantity in Table 6] to the energy efficiency and clean energy technology account. [, minus the number of CO_2 CCR allowances that remain in the energy efficiency and clean energy technology account at the end of the prior calendar year.]

Table 6 is repealed.

(2) As set forth in 21 NYCRR Part 507, NYSERDA [or its agent] shall follow these rules for the sale of CO_2 CCR allowances:

(i) CO_2 CCR tier 1 allowances shall only be sold at an auction in which total demand for allowances, above the CCR tier 1 trigger price, exceeds the number of CO_2 allowances available for purchase at the auction, not including any CO_2 CCR allowances;

(ii) If the condition of subparagraph (i) of this paragraph is met at an auction, then the number of CO_2 CCR tier 1 allowances offered for sale by NYSERDA [or its agent] at the auction shall be equal to the number of CO_2 CCR tier 1 allowances in the energy efficiency and clean energy technology account at the time of the auction;

(iii) CO_2 CCR tier 2 allowances shall only be sold at an auction in which total demand for allowances, above the CCR tier 2 trigger price, exceeds the number of CO_2 allowances available for purchase at the auction, not including any CO_2 CCR tier 2 allowances;

(iv) If the condition of subparagraph (iii) of this paragraph is met at an auction, then the number of CO_2 CCR tier 2 allowances offered for sale by NYSERDA at the auction shall be equal to the number of CO_2 CCR tier 2 allowances in the energy efficiency and clean energy technology account at the time of the auction;

([iii]v) After all of the CO_2 CCR tier 1 allowances in the energy efficiency and clean energy technology account have been sold in a given calendar year, no additional CO_2 CCR tier 1 allowances will be sold at any auction for the remainder of the calendar year, even if the condition in subparagraph (i) of this paragraph is met at an auction; and

(vi) After all of the CO_2 CCR tier 2 allowances in the energy efficiency and clean energy technology account have been sold in a given calendar year, no additional CO_2 CCR tier 2 allowances will be sold at any auction for the remainder of the calendar year, even if the condition in subparagraph (iii) of this paragraph is met at an auction; and

([iv]vii) At an auction in which CO_2 CCR tier 1 allowances are sold, but no CO_2 CCR tier 2 allowances are sold, the reserve price for that auction shall be the CCR tier 1 trigger price.

(viii) At an auction in which CO_2 CCR tier 2 allowances are sold, the reserve price for the auction shall be the CCR tier 2 trigger price.

([v]ix) If the condition in subparagraph (i) of this paragraph is not satisfied, no CO_2 CCR tier 1 or tier 2 allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve price.

(x) If the condition in subparagraph (iii) of this paragraph is not satisfied, no CO_2 CCR tier 2 allowances shall be offered for sale at the auction, and the reserve price for the auction shall be determined as follows:

('a') If the condition of subparagraph (i) of this paragraph is met, the reserve price shall be equal to the CCR tier 1 trigger price.

('b') If the condition of subparagraph (i) of this paragraph is not met, the reserve price shall be equal to the minimum reserve price.

(3) NYSERDA [or its agent] shall implement the reserve price in the following manner:

(i) No allowances shall be sold at any auction for a price below the reserve price for that auction; and

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

(4) If any CCR tier 1 or CCR tier 2 allowances remain in the energy efficiency and clean energy account after the distribution of allowances from the final auction of the current year, then those CCR tier 1 and CCR tier 2 allowances will be removed from the account and not offered for auction or sale.

Current subdivision (c) is of this section is repealed. Subdivision (d) and (e) are re-lettered as (c) and (d).

([d]c) 'Voluntary renewable energy market[and eligible biomass] set-aside allocation.' The department shall allocate [700,000 tons] allowances in accordance with Table 4 each year, to the voluntary renewable energy market [and eligible biomass] set-aside account [in 2020 and 900,000 tons in 2021 and each year thereafter] from the CO_2 Budget Trading Program [annual adjusted]base budget as set forth in section 242-[5.2]5.1 of this Subpart, as applicable. The department shall administer the voluntary renewable energy market [and eligible biomass] set-aside account in accordance with the following procedures.

Table 4. VREM Set-Aside Allocation by year										
2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037 and each year thereafter
200,000	175,000	150,000	125,000	100,000	75,000	50,000	42,857	35,714	28,571	21,429

(1) The department will open and manage a general account for the voluntary renewable energy market [and eligible biomass]set-aside account.

(2) All submissions to the department required for the retirement of an allowance from the voluntary renewable energy market [and eligible biomass] set-aside account under this subdivision must be from the sponsor of a voluntary renewable energy purchase (VREP), herein referred to as the "VREP applicant" [or the CO_2 authorized account representative for a CO_2 budget source co-firing eligible biomass].

(3) A VREP applicant [or a CO_2 authorized account representative for a CO_2 budget source co-firing eligible biomass] may submit a written request to the department to retire a specified number of CO_2 allowances in the voluntary renewable energy market [and eligible biomass]set-aside account, herein referred to

as a "VREM[EB] application." A VREM[EB] application must be submitted by the March 1st, immediately following the allocation year for which it is being made and must include information to assure that:

(i) a voluntary renewable energy purchase demonstrates accreditable CO_2 emissions reductions or avoidance during the control period in accordance with department measurement and verification protocol[; or].

[(ii) for a CO_2 authorized account representative of a CO_2 budget source co-firing eligible biomass as a compliance mechanism, CO_2 emissions from the CO_2 budget source are attributable to the burning of fuel that the department has determined is eligible biomass.]

(4) A VREM[EB] application regarding a voluntary renewable energy purchase shall contain data documenting purchases of voluntary renewable energy that meet the requirements of this subdivision. Such data must be from reputable sources, which may include retail electricity providers, organizations that certify renewable energy products, and other parties as determined by the department. To be considered, data must be verifiable and document the following for voluntary renewable energy purchases:

(i) Documentation of voluntary renewable energy or renewable energy attribute credit purchases by retail customers, by customer class, in the State during the control period immediately preceding the application date.

(ii) Documentation that the renewable energy or renewable energy attributes related to voluntary renewable energy or renewable energy attribute credit sales were procured by the retail provider.

(iii) Time period when the retail purchase(s) was made.

(iv) State where the electricity was generated or the renewable energy attribute credit was created, including documentation of facility name, unique generator identification number, and fuel type.

(v) Time period when the electricity was generated or the renewable energy attribute credit was created.

(5) By the October 31st following the March 1st application deadline established in paragraph (2) of this subdivision, the department shall determine the actual MWh of voluntary renewable energy market purchases that occurred during the allocation year. The department shall retire CO_2 allowances in the voluntary renewable energy market[and eligible biomass] set-aside account in an amount up to the number of tons of CO_2 represented by actual voluntary renewable energy market purchases, based on actual MWh purchases demonstrated by each project sponsor as follows:

CO_2 tons = MP x EF

where:

CO_2 tons, rounded down to the nearest whole ton, is the number of allowances to be placed in the retirement account.

MP is the MWh of voluntary renewable energy purchased in the State during the control period that meets the requirements of this subdivision.

EF is the CO_2 emissions factor for the control area where the electricity represented by the sale

was generated. The department may utilize an EF different from those provided by the VREP applicant.

Paragraph 6 is repealed and replaced with the following text:

(6) RESERVED

(7) 'VREM allowance requests in excess of allowances in an allocation year.'

(i) The department may retire allowances that remain in the voluntary renewable energy market set-aside from allocation years preceeding the allocation year on behalf of a VREP applicant, if there are insufficient allowances in that allocation year to meet the demand of all eligible VREM applications.

(ii) If more than one VREP applicant [or CO_2 authorized account representative]requests the retirement of CO_2 allowances pursuant to this subdivision, and the number of CO_2 allowances that are subject to department approved requests exceeds the number of CO_2 allowances in the voluntary renewable energy market [and eligible biomass]set-aside accounts up to[as of] December 31 of the previous calendar year, the department will retire CO_2 allowances from the VREM set-aside account for the VREP applicants [and CO_2 authorized account representatives]in the order in which the VREP applicants [and CO_2 authorized account representatives]submitted approvable retirement requests. For purposes of this paragraph, VREM[EB] applications will be considered simultaneous if they are made in the same month. Should approvable VREM[EB] applications in excess of the allocation to the relevant voluntary renewable energy market [and eligible biomass]set-aside accounts up to [as of] December 31 of the previous calendar year be submitted in the same month by different VREP applicants[and CO_2 authorized account representatives], the department will retire CO_2 allowances for those VREP applicants [and CO_2 authorized account representatives]on a basis proportional to the number of CO_2 allowances requested by each VREP applicant[and CO_2 authorized account representative].

(8) ‘Flow back of undistributed CO_2 allowances from the voluntary renewable energy market [and eligible biomass]set-aside account’. After retiring allowances pursuant to this subdivision for an allocation year, any remaining CO_2 allowances will either remain in the voluntary renewable energy market [and eligible biomass] set-aside account or be transferred to the energy efficiency and clean energy technology account.

([e]d) ‘Long term contract set-aside allocation.’ The department shall allocate [1,500,000 tons]allowances in accordance with Table 5 to the long term contract set-aside account from the CO_2 Budget Trading Program annual [adjusted]base budget as set forth in section 242-[5.2]5.1 of this Subpart, as applicable. The department shall administer the long term contract set-aside account in accordance with the following procedures.

Table 5. LTC Set-Aside Allocation by Year									
2027 and preceding years	2028	2029	2030	2031	2032	2033	2034	2035	2036
1,500,000	1,451,836	1,411,095	1,175,912	940,730	705,547	470,365	403,170	335,975	246,032

(1) The department will open and manage a general account for the long-term contract set-aside account for each allocation year.

(2) The sponsor for a long-term contract hardship demonstration must establish a compliance account under subdivision 242-6.2(a) of this Part. All submissions to the department required for the reward of allowances from the long-term contract set-aside account under this section must be from the CO_2 authorized account representative for the compliance account, herein referred to as the “LTC applicant.”

(3) The LTC applicant may submit a written request to the department for the reward of a specified number of CO_2 allowances in the long-term contract set-aside account. This request must be submitted by the

December 1st, immediately preceding the allocation year for which it is being made and must include information to assure, to the department's satisfaction, that:

(i) the long-term contract was entered into prior to March 2006;

(ii) the LTC applicant's purchase of allowances at auction or in the secondary market leads to financial hardship, because the LTC applicant is unable to pass on the cost of CO_2 allowances to the purchasing party under the conditions of the long-term contract; and

(iii) each CO_2 budget unit at the CO_2 budget source covered by the long-term contract uses natural gas as its primary fuel, or the CO_2 budget source's emission rate is no higher than 1100 lbs/MWhr.

(4) The written request submitted pursuant to paragraph (3) of this subdivision shall contain, at a minimum, the following information.

(i) A copy of the long-term contract and explanation that the LTC applicant is unable to:

(a) pass the cost of allowances on to the purchasing party, or

(b) renegotiate the terms of the contract;

(ii) Financial statements from each of the previous five years that clearly demonstrate the revenues and expenses of the LTC applicant's budget source;

(iii) Fuel, total net output and emissions data from the previous three-year period;

(iv) The portion of emissions from the CO_2 budget unit or units covered by the long-term contract during the upcoming year;

(v) Costs associated with the CO_2 Budget Trading Program compared to all other costs associated with the operation of the CO_2 budget unit or units; and

(vi) A demonstration that the LTC applicant will suffer losses in excess of the value of allowances sought, supported by projected costs and revenues for the allocation year for which the LTC application pertains.

(5) Except as may be modified by paragraphs (6) or (9) of this subdivision, the department will determine the number of CO_2 allowances to be allocated to each LTC applicant that the department determines meets the eligibility requirements of paragraph (3) of this subdivision, in accordance with the following procedures:

LTC Allowances = (((LTCer) x (TO))/2000) -RLTCA;

where:

“LTC Allowances” are the result of the calculation;

“LTCer” is the applicable emission rate

“TO” is total net output from the LTC facility;

“RLTCA” is the number of allowances remaining in an LTC applicant’s compliance account

(i) For the purposes of this subdivision, total net output shall be the greatest total net output

experienced by the unit for any single calendar year among the three calendar years, for which data is submitted, proceeding the date by which the department must make the CO_2 allocations pursuant to this subdivision.

(ii) For the purposes of this subdivision, the "LTCer" will be the lesser of the actual emission rate included in the application and 1100 lbs/MWhr.

(iii) For the purposes of this subdivision, there will be no "RLTCA" for the first application, but for each subsequent application, the department will determine the "RLTCA" to be the difference between the allowances allocated to the LTC applicant's compliance account in the previous allocation year and actual emissions for that allocation year.

(6) The number of CO_2 allowances to be allocated to an eligible LTC applicant, as determined pursuant to paragraph (5) of this subdivision, shall be discounted by the department as follows, if applicable:

(i) by the percentage of CO_2 allowance cost that the LTC applicant is able to pass on to the purchasing party; and

(ii) by the percentage of CO_2 emissions from the CO_2 budget source that are not covered by the long-term contract.

(7) Allowances will be allocated to the LTC applicant's compliance account.

(8) Allowances allocated pursuant to this subdivision must only be used for compliance with the CO_2 budget emissions limitation for the source. The sale or transfer of allowances from the LTC applicant's compliance account will be considered a violation of this subdivision.

(9) ‘LTC allowance requests in excess of allowances in allocation year.’

(i) The department may allocate allowances that remain in the LTC set-aside from allocation years preceeding the allocation year in the LTC application if there are insufficient allowances in the allocation year to meet the demand of all eligible LTC applications.

(ii) If more than one LTC applicant requests the allocation[award] of CO_2 allowances and the number of CO_2 allowances that are subject to the department approved requests exceeds the number of CO_2 allowances in the relevant long term contract set-side account, the department will allocate [award] CO_2 allowances for those LTC applicants on a basis proportional to the number of CO_2 allowances requested by each LTC applicant.

(10) ‘Flow back of undistributed CO_2 allowances from the long term contract set-aside account’. After allocating allowances pursuant to this subdivision for an allocation year, the department will transfer any remaining CO_2 allowances from the long term contract set-aside account to the energy efficiency and clean energy technology account or will retain the allowances in the LTC set-aside for allocation to future LTC applications.

Subdivision (f) is repealed.

Subpart 242-6 CO_2 Allowance Tracking System (COATS)

242-6.1 CO_2 Allowance Tracking System (COATS) accounts.

(a) ‘Nature and function of compliance accounts’. Consistent with subdivision 242-6.2(a) of this Subpart,

the department [or its agent] will establish one compliance account for each CO_2 budget source. Allocations of CO_2 allowances, including those for long term contract pursuant to Subpart 242-5 of this Part and [Deductions]deductions or transfers of CO_2 allowances pursuant to sections 242-4.2 of this Part, 242-6.5, 242-6.7 of this Subpart, or Subpart 242-7 of this Part will be recorded in the compliance accounts in accordance with this Subpart.

(b) 'Nature and function of general accounts'. Consistent with subdivision 242-6.2(b) of this Subpart, the department [or its agent] will establish, upon request, a general account for any person. Transfers of CO_2 allowances pursuant to Subpart 242-7 of this Part will be recorded in the general account in accordance with this Subpart.

242-6.2 Establishment of accounts.

(a) 'Compliance accounts'. Upon receipt of a complete account certificate of representation under section 242-2.4 of this Part, the department [or its agent] will establish a compliance account for each CO_2 budget source for which the account certificate of representation was submitted.

(b) 'General accounts'.

(1) 'Application for general account'. Any person may apply to open a general account for the purpose of holding and transferring CO_2 allowances. An application for a general account may designate one and only one CO_2 authorized account representative and one and only one CO_2 authorized alternate account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the CO_2 authorized alternate account representative is selected shall include a procedure for authorizing the CO_2 authorized alternate account representative to act in lieu of the CO_2 authorized account representative. A complete

application for a general account shall be submitted to the department [or its agent] and shall include the following elements in a format prescribed by the department [or its agent]:

(i) name, address, e-mail address, and telephone number of the CO_2 authorized account representative and any CO_2 authorized alternate account representative;

(ii) at the option of the CO_2 authorized account representative, organization name and type of organization;

(iii) a list of all persons subject to a binding agreement for the CO_2 authorized account representative or any CO_2 authorized alternate account representative to represent their ownership interest with respect to the CO_2 allowances held in the general account;

(iv) the following certification statement by the CO_2 authorized account representative and any CO_2 authorized alternate account representative: “I certify that I was selected as the CO_2 authorized account representative or the CO_2 authorized alternate account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO_2 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_2 Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the department [or its agent] or a court regarding the general account.”;

(v) the signature of the CO_2 authorized account representative and any CO_2 authorized alternate account representative and the dates signed; and

(vi) unless otherwise required by the department [or its agent], documents of agreement referred to in the application for a general account shall not be submitted to the department [or its agent]. [Neither t]The department [nor its agent] shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) 'Authorization of CO_2 authorized account representative'.

(i) Upon receipt by the department [or its agent] of a complete application for a general account under paragraph (1) of this subdivision:

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

('b') The CO_2 authorized account representative and any CO_2 authorized alternate account representative for the general account shall represent and, by [his or her]their representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO_2 allowances held in the general account in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative or any CO_2 authorized alternate account representative and such person. Any such person shall be bound by any order or decision issued to the CO_2 authorized account representative or any CO_2 authorized alternate account representative by the department [or its agent] or a court regarding the general account.

('c') Any representation, action, inaction, or submission by any CO_2 authorized alternate account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CO_2 authorized account representative or any CO_2 authorized alternate account representative for the persons having an ownership interest with respect to CO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CO_2 authorized account representative or any CO_2 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_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The 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 (ii) of this paragraph.

(3) 'Changing CO_2 authorized account representative and CO_2 authorized alternate account representative; changes in persons with ownership interest'.

(i) The CO_2 authorized account representative for a general account may be changed at any time upon receipt by the department [or its agent] of a superseding complete application for a general account under paragraph (1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous CO_2 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_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

(ii) The CO_2 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 (1) of this subdivision. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous CO_2 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_2 authorized alternate account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

(iii) In the event a new person having an ownership interest with respect to CO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any CO_2 authorized alternate account representative, and the decisions, orders, actions, and inactions of the department [or its agent], as if the new person were included in such list.

(iv) Within 30 days following any change in the persons having an ownership interest with respect to CO_2 allowances in the general account, including the addition or deletion of persons, the CO_2 authorized account representative or any CO_2 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_2 allowances in the general account to include the change.

(4) ‘Objections concerning CO_2 authorized account representative’.

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

(ii) Except as provided in Subparagraphs (3)(i) and (ii) of this subdivision, 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_2 authorized account representative or any CO_2 authorized alternate account representative for a general account shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative or the finality of any decision or order by the department [or its agent] under the CO_2 Budget Trading Program.

(iii) [Neither t]The department [nor its agent] will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO_2 authorized account representative or any CO_2 authorized alternate account representative for a general account, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

(5) ‘Delegation by CO_2 authorized account representative and CO_2 authorized alternate account representative’.

(i) A CO_2 authorized account representative may delegate, to one or more natural persons, [his or her]their authority to make an electronic submission to the department [or its agent] provided for under this Subpart and Subpart242-7 of this Part.

(ii) A CO_2 authorized alternate account representative may delegate, to one or more natural persons, [his or her]their authority to make an electronic submission to the department [or its agent] provided for under this Subpart and Subpart 242-7 of this Part.

(iii) In order to delegate authority to make an electronic submission to the department [or its agent] in accordance with subparagraphs (i) and (ii) of this paragraph, the CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, must submit to the department [or its agent] a notice of delegation, in a format prescribed by the department that includes the following elements:

('a') The name, address, e-mail address, and telephone number of such CO_2 authorized account representative or CO_2 authorized alternate account representative;

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

('c') For each such natural person, a list of the type of electronic submissions under clause (a) or (b) of this subparagraph for which authority is delegated to them[him or her]; and

('d') The following certification statements by such CO_2 authorized account representative or CO_2 authorized alternate account representative:

('1') "I agree that any electronic submission to the department [or its agent] that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or CO_2 authorized alternate account representative, as appropriate, and before this notice of delegation is superseded by

another notice of delegation under subparagraph 242-6.2(b)(5)(iv) shall be deemed to be an electronic submission by me."

('2') "Until this notice of delegation is superseded by another notice of delegation under subparagraph 242-6.2(b)(5)(iv), 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 paragraph 242-6.2(b)(5) is terminated."

(iv) A notice of delegation submitted under subparagraph (iii) of this paragraph shall be effective, with regard to the CO_2 authorized account representative or CO_2 authorized alternate account representative identified in such notice, upon receipt of such notice by the department [or its agent] and until receipt by the department [or its agent] of a superseding notice of delegation by such CO_2 authorized account representative or alternate CO_2 authorized account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in subclause (iii)(d)(1) of this paragraph and made in accordance with a notice of delegation effective under subparagraph (iv) of this paragraph shall be deemed to be an electronic submission by the CO_2 authorized account representative or CO_2 authorized alternate account representative submitting such notice of delegation.

(c) 'Account identification'. The department [or its agent] will assign a unique identifying number to each account established under subdivision (a) or (b) of this section.

representative.

Following the establishment of a [CO_2 allowance tracking system] COATS account, all submissions to the department [or its agent] pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CO_2 allowances in the account, shall be made only by the CO_2 authorized account representative for the account.

242-6.4 Recordation of CO_2 allowance allocations.

(a) By January 1 of each allocation year, the department [or its agent] will record the CO_2 allowances for that allocation year in the energy efficiency and clean energy technology account, the voluntary renewable energy market [and eligible biomass]set-aside account, and the long term contract set-aside account. [Immediately upon the effective date of the 2020 revisions to this Part, the department shall transfer allowances from the CO_2 Budget Trading Program annual adjusted budget for allocation year 2020 to the program review retirement set-aside in accordance with the provisions of subdivision 242-6.2(f) of this part.]

(b) 'Serial numbers for allocated CO_2 allowances'. When allocating CO_2 allowances to and recording them in an account, the department [or its agent] will assign each CO_2 allowance a unique identification number that will include digits identifying the year for which the CO_2 allowance is allocated.

242-6.5 Compliance.

(a) 'Allowances available for compliance deduction'. CO_2 allowances that meet the following criteria are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements of subdivision 242-1.5(c) of this Part for a control period or an interim control period.

(1) The CO_2 allowances[, other than CO_2 offset allowances,] are of allocation years that fall within a prior control period, the same control period or the same interim control period for which the allowances will be deducted.

(2) The CO_2 allowances are held in the CO_2 budget source's compliance account as of the CO_2 allowance transfer deadline for that control period or interim control period or are transferred into the compliance account by a CO_2 allowance transfer correctly submitted for recordation under section 242-7.1 of this Part by the CO_2 allowance transfer deadline for that control period or interim control period.

(3) For CO_2 offset allowances, the number of CO_2 offset allowances that are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements under subdivision 242-1.5(c) of this Part for a control period or an interim control period may not exceed 3.3 percent of the CO_2 budget source's CO_2 emissions for that control period, or of 0.50 times the CO_2 budget source's CO_2 emissions for an interim control period, as determined in accordance with this Subpart and Subpart 242-8 of this Part.

(4) The CO_2 allowances are not necessary for deductions for excess emissions for a prior control period under subdivision (d) of this section.

(b) 'Deductions for compliance'. Following the recordation, in accordance with section 242-7.2 of this Part, of <u>any</u> CO_2 allowance transfers submitted for recordation in the CO_2 budget source's compliance account by the CO_2 allowance transfer deadline for a control period or interim control period, the department [or its agent] will deduct CO_2 allowances available under subdivision (a) of this section to cover the source's CO_2 emissions (as determined in accordance with Subpart 242-8 of this Part) for the control period or interim control period, as follows:

(1) until the amount of CO_2 allowances deducted equals the number of tons of total CO_2 emissions less the CO_2 allowances deducted to meet the requirements of paragraph 242-1.5(c)(2) of this Part with respect to the previous two interim control periods, or 0.50 times the number of tons of total CO_2 emissions for an interim control period, [less any CO_2 emissions attributable to the burning of eligible biomass,]determined in accordance with Subpart 242-8 of this Part from all CO_2 budget units at the CO_2 budget source for the control period or interim control period; or

(2) if there are insufficient CO_2 allowances to complete the deductions in paragraph (1) of this subdivision, until no more CO_2 allowances available under subdivision (a) of this section remain in the compliance account.

(c) 'Identification of available CO_2 allowances by serial number; default compliance deductions'.

(1) The CO_2 authorized account representative for a source's compliance account may request that specific CO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period or interim control period in accordance with subdivision (b) or (d) of this section. Such identification shall be made in the compliance certification report submitted in accordance with section 242-4.1 of this Part.

(2) The department [or its agent] will deduct CO_2 allowances for a control period or interim control period from the CO_2 budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO_2 allowances by serial number under paragraph (1) of this subdivision, in the following order:

(i) First, subject to the relevant compliance deduction limitations under paragraphs (a)(3) and (d)(1) of this section, CO_2 offset allowances. CO_2 offset allowances shall be deducted in chronological order

('i.e.', CO_2 offset allowances from earlier allocation years shall be deducted before CO_2 offset allowances from later allocation years). In the event that some, but not all CO_2 offset allowances from a particular allocation year are to be deducted, CO_2 allowances shall be deducted by serial number, with lower serial numbered allowances deducted before higher serial numbered allowances.

(ii) Second, any CO_2 allowances, other than CO_2 offset allowances, which are available for deduction under subdivision (a) of this section. CO_2 allowances shall be deducted in chronological order ('i.e.', CO_2 allowances from earlier allocation years shall be deducted before CO_2 allowances from later allocation years). In the event that some, but not all CO_2 allowances from a particular allocation year are to be deducted, CO_2 allowances shall be deducted by serial number, with lower serial numbered allowances deducted before higher serial numbered allowances.

(d) 'Deductions for excess emissions'.

(1) After making the deductions for compliance under subdivision (b) of this section, the department [or its agent] will deduct from the CO_2 budget source's compliance account a number of CO_2 allowances, equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO_2 allowances to cover three times the number of the source's excess emissions, the source shall be required to immediately transfer sufficient allowances into its compliance account. No CO_2 offset allowances may be deducted to account for the source's excess emissions.

(2) Any CO_2 allowance deduction required under paragraph (1) of this subdivision shall not affect the liability of the owners and operators of the CO_2 budget source or the CO_2 units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable State law. The following guidelines will be followed in assessing fines, penalties or other

obligations.

(i) For purposes of determining the number of days of violation, if a CO_2 budget source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

(iii) For the purposes of determining the number of days of violation, if a CO_2 budget source has excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

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

(3) The propriety of the department's determination that a CO_2 budget source had excess emissions and the concomitant deduction of CO_2 allowances from that CO_2 budget source's account may be later challenged in the context of the initial administrative enforcement, or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that excess emissions violation will not act to prevent the department [or its agent] from initially deducting the CO_2 allowances resulting from the department's original determination that the relevant CO_2 budget source has had excess emissions. Should the department's determination of the existence or extent of the CO_2 budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the department will act as follows.

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

(ii) In any instance where the department's determination of the extent of excess emissions was too high, the department will distribute to the relevant CO_2 budget source a number of CO_2 allowances equaling the number of CO_2 allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO_2 budget source's compliance account no longer exist, the CO_2 allowances will be provided to a general account selected by the owner or operator of the CO_2 budget source from which they were originally deducted.

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

(f) 'Action by the department on submissions'.

(1) The department may review and conduct independent audits concerning any submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the submissions.

(2) The department may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on information in the submissions, as adjusted under paragraph (1) of this subdivision.

242-6.6 Banking.

Each CO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CO_2 allowance is deducted or transferred under section 242-4.2 of this Part, and sections 242-6.5, 242-6.7 of this Subpart, or Subpart 242-7 of this Part.

242-6.7 Account error.

The department [or its agent] may, at its sole discretion and on [his or her]their own motion, correct any error in any [CO_2 allowance tracking system] COATS account. Within 10 business days of making such correction, the department [or its agent] will notify the CO_2 authorized account representative for the account.

242-6.8 Closing of general accounts.

(a) A CO_2 authorized account representative of a general account may instruct the department [or its agent] to close the account by submitting a statement requesting deletion of the account from the [CO_2 allowance tracking system] COATS and by correctly submitting for recordation under section 242-7.1 of this Part a CO_2 allowance transfer of all CO_2 allowances in the account to one or more other CO_2 allowance tracking system accounts.

(b) If a general account shows no activity for a period of one year or more and does not contain any CO_2 allowances, the department [or its agent] may notify the CO_2 authorized account representative for the account that the account will be closed in the [CO_2 allowance tracking system] COATS 30 business days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the department [or its agent] receives a correctly submitted transfer of CO_2 allowances into the account under section 242-7.1 of this Part or a statement submitted by the CO_2 authorized account representative demonstrating to the satisfaction of the department [or its agent] good cause as to why the account should not be closed. The department

[or its agent] will have sole discretion to determine if the [owner or operator]CO_2 authorized account representative of the [unit]account demonstrated that the account should not be closed.

Subpart 242-7 CO_2 Allowance Transfers

242-7.1 Submission of CO_2 allowance transfers.

The CO_2 authorized account representatives seeking recordation of a CO_2 allowance transfer shall submit the transfer to the department [or its agent]. To be considered correctly submitted, the CO_2 allowance transfer shall include the following elements in a format specified by the department [or its agent]:

(a) the numbers identifying both the transferor and transferee accounts;

(b) a specification by serial number of each CO_2 allowance to be transferred;

(c) the printed name and signature of the CO_2 authorized account representative of the transferor account and the date signed;

(d) the date of the completion of the last sale or purchase transaction for the allowance, if any; and

(e) the purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subdivision (d) of this section.

242-7.2 Recordation.

(a) Within five business days of receiving a CO_2 allowance transfer, except as provided in subdivision (b) of this section, the department [or its agent] will record a CO_2 allowance transfer by moving each CO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) the transfer is correctly submitted under section 242-7.1 of this Subpart; and

(2) the transferor account includes each CO_2 allowance identified by serial number in the transfer.

(b) A CO_2 allowance transfer into or out of a compliance account that is submitted for recordation following the CO_2 allowance transfer deadline and that includes any CO_2 allowances that are of allocation years that fall within a control period or interim control period prior to or the same as the control period or interim control period to which the CO_2 allowance transfer deadline applies will not be recorded until after completion of the process pursuant to section 242-6.5 of this Part.

(c) Where a CO_2 allowance transfer submitted for recordation fails to meet the requirements of subdivision (a) of this section, the department [or its agent] will not record such transfer.

242-7.3 Notification.

(a) 'Notification of recordation'. Within five business days of recordation of a CO_2 allowance transfer under section 242-7.2 of this Subpart, the department [or its agent] will notify each party to the transfer. Notice will be given to the CO_2 authorized account representatives of both the transferor and transferee accounts.

(b) 'Notification of non-recordation'. Within 10 business days of receipt of a CO_2 allowance transfer that fails to meet the requirements of subdivision 242-7.2(a) of this Subpart, the department [or its agent] will notify

the CO_2 authorized account representatives of both accounts subject to the transfer of:

(1) a decision not to record the transfer, and

(2) the reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CO_2 allowance transfer for recordation following notification of non-recordation.

Subpart 242-8 Monitoring,[and] Reporting and Recordkeeping

Section 8.1 is repealed and replaced with the following text:

242-8.1 General requirements.

The owners and operators, and to the extent applicable, the CO_2 authorized account representative of a CO_2 budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in this Subpart and all applicable sections of 40 CFR part 75 (see Table 1, section 200.9 of this Title). For purposes of complying with such requirements, the definitions in section 242-1.2 and in 40 CFR 72.2 shall apply, and the terms ‘‘affected unit,’’ ‘‘designated representative,’’ and ‘‘continuous emissions monitoring system’’ (or ‘‘CEMS’’) in 40 CFR part 75 (see Table 1, section 200.9 of this Title) shall be replaced by the terms ‘‘CO_2 budget unit,’’ ‘‘CO_2 authorized account representative,’’ and ‘‘continuous emissions monitoring system’’ (or ‘‘CEMS’’), respectively, as defined in section 242-1.2 of this Part.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each CO_2 budget unit must meet the following requirements.

(1) Install all monitoring systems required under this subpart for monitoring CO_2 mass emissions. This includes all systems required to monitor CO_2 concentration, stack gas flow, O_2 concentration, heat input, and fuel flow rate, as applicable, in accordance with 40 CFR 75.13, 75.71, and 75.72 and all portions of appendix G of 40 CFR part 75 (see Table 1, section 200.9 of this Title), except for equation G-1 in 40 CFR part 75 (see Table 1, section 200.9 of this Title). Equation G-1 in appendix G shall not be used to determine CO_2 emissions under this Part.

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

Section 8.2 is repealed and replaced with the following text.

242-8.2 RESERVED

Section 8.3 is repealed and replaced with the following text.

242-8.3 RESERVED

Section 8.4 is repealed and replaced with the following text:

242-8.4 RESERVED

242-8.5 Recordkeeping and reporting.

(a) 'General provisions'. The CO_2 authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable record keeping and reporting requirements under 40 CFR 75.73 (see Table 1, section 200.9 of this Title) and with the requirements of section 242-2.1(e) of this Part.

(b) 'Monitoring plans'. The owner or operator of a CO_2 budget unit shall submit a monitoring plan in the

manner prescribed in 40 CFR 75.62 (see Table 1, section 200.9 of this Title).

(c) 'Certification applications'. The CO_2 authorized account representative shall submit an application to the department within 45 days after completing all CO_2 monitoring system initial certification or recertification tests required [under section 242-8.2 of this Subpart including the information required] under 40 CFR 75.63 and 40 CFR 75.53[(e) and (f)](g) and (h) (see Table 1, section 200.9 of this Title).

(d) 'Quarterly reports'. The CO_2 authorized account representative shall submit quarterly reports, as follows:

(1) The CO_2 authorized account representative shall report the CO_2 mass emissions data and heat input data for the CO_2 budget unit, in an electronic format prescribed by the administrator unless otherwise prescribed by the department for each calendar quarter beginning with:

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

(ii) for a unit commencing commercial operation on or after July 1, 2008, the calendar quarter corresponding to, the earlier of the date of provisional certification or the applicable deadline for initial certification under subdivision 242-8.1(b) of this Part or, unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The CO_2 authorized account representative shall submit each quarterly report to the department [or its agent] within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR part 75 and 40 CFR 75.64 (see Table 1, section

200.9 of this Title). Quarterly reports shall be submitted for each CO_2 budget unit (or group of units using a common stack), and shall include all of the data and information required in Subpart G of 40 CFR part 75 (see Table 1, section 200.9 of this Title), except for opacity, NO_X, and SO_2 provisions.

(3) 'Compliance certification'. The CO_2 authorized account representative shall submit to the department [or its agent] a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(i) the monitoring data submitted were recorded in accordance with the applicable requirements of this Subpart and 40 CFR part 75 (see Table 1, section 200.9 of this Title), including the quality assurance procedures and specifications;

(ii) for a unit with add-on CO_2 emissions controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1) (see Table 1, section 200.9 of this Title), the add-on emissions controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of 40 CFR part 75 (see Table 1, section 200.9 of this Title) and the substitute values do not systematically underestimate CO_2 emissions; and

(iii) the CO_2 concentration values substituted for missing data under Subpart D of 40 CFR part 75 (see Table 1, section 200.9 of this Title) do not systematically underestimate CO_2 emissions.

242-8.6 Petitions.

(a) Except as provided in subdivision (c) of this section, the CO_2 authorized account representative of a

CO_2 budget unit that is subject to an acid rain emissions limitation may submit a petition [under]to the administrator under 40 CFR 75.66 (see Table 1, section 200.9 of this Title) and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75 (see Table 1, section 200.9 of this Title). Application of an alternative to any requirement of 40 CFR Part 75 (see Table 1, section 200.9 of this Title) is in accordance with this Subpart only to the extent that the petition is approved in writing by the administrator, and subsequently approved in writing by the department.

(b) Petitions for a CO_2 budget unit that is not subject to an acid rain emissions limitation.

(1) The CO_2 authorized account representative of a CO_2 budget unit that is not subject to an acid rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 (see Table 1, section 200.9 of this Title) and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75 (see Table 1, section 200.9 of this Title). Application of an alternative to any requirement of 40 CFR Part 75 (see Table 1, section 200.9 of this Title) is in accordance with this Subpart only to the extent that the petition is approved in writing by the administrator, and subsequently approved in writing by the department.

(2) In the event that the administrator declines to review a petition under 40 CFR 75.66 (see Table 1, section 200.9 of this Title) as described in this Subpart, the CO_2 authorized account representative of a CO_2 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 this Subpart. That petition shall contain all of the relevant information specified in 40 CFR 75.66 (see Table 1, section 200.9 of this Title). Application of an alternative to any requirement of this Subpart [40 CFR 75.66 (see Table 1, section 200.9 of this Title). Application of an alternative to any requirement of 40 CFR part 75 (see Table 1, section 200.9 of this Title)] is in accordance with this Subpart only to the extent that the petition is approved in writing by the department.

(c) The CO_2 authorized account representative of a CO_2 budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 (see Table 1, section 200.9 of this Title) to the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 (see Table 1, section 200.9 of this Title) or a CO_2 concentration CEMS used under 40 CFR 75.71(a)(2) (see Table 1, section 200.9 of this Title). Application of an alternative to any requirement of this Subpart is in accordance with this Subpart only to the extent the petition is approved in writing by both the department and the administrator.

Section 8.7 is repealed and replaced with the following text.

242-8.7 RESERVED

Subpart 242-9 RESERVED

Subpart 10 is repealed and replaced with the following text.

Subpart 242-10 RESERVED