

Final Model Rule
for the
**Midwestern Greenhouse
Gas Reduction Accord**

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FINAL MODEL RULE for the MIDWESTERN GREENHOUSE GAS REDUCTION ACCORD

Part XX GHG Budget Trading Program

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Subpart XX-1 GHG Budget Trading Program General Provisions

XX-1.1 Purpose.

This Part establishes a cap-and-trade program to reduce anthropogenic emissions of greenhouse gases from the covered sources 20% below 2005 levels by December 31, 2020 and 80% below 2005 levels by December 31, 2050. The first compliance period for the cap-and-trade program will begin January 1 of the first calendar year that is at least 12 months after the adoption of the model rule and execution of an implementing memorandum of understanding by the participating jurisdictions. If an economy-wide federal [Canada/U.S.] cap-and-trade system is adopted, this rule will be amended to promote a smooth transition into such program.

XX-1.2 Definitions.

(a) *Account number.* The identification number given by the REGULATORY AGENCY or its agent to each Midwest Allowance Tracking System (MATS) account.

(b) *Acid Rain Program.* Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and 40 CFR Parts 72 through 78.

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

(d) *Allocate or allocation.* The determination by the REGULATORY AGENCY of the number of GHG allowances to be recorded in the compliance account of a GHG budget unit, an allocation set-aside or special purpose account, or the general account of the sponsor of an approved GHG emissions offset project.

(e) *Allocation year.* A calendar year for which the REGULATORY AGENCY allocates or awards GHG allowances pursuant to Subparts XX-5 and XX-10. The allocation year of each GHG allowance is reflected in the unique identification number given to the allowance pursuant to subdivision XX-6.4(c).

(f) *Allowance Reserve Pool.* A set-aside of allowances to be used for cost-containment and preventing excessively high or low allowance prices.

(g) *Alternate GHG authorized account representative.* For a GHG budget source and each GHG budget unit at the source, the natural person who is authorized by the owners and operators of the source and all GHG budget units at the source, in accordance with Subpart XX-2, to represent and legally bind each owner and operator in matters pertaining to the GHG Budget Trading Program or, for a general account, the natural person who is authorized, under Subpart XX-6, to transfer or otherwise dispose of GHG allowances held in the general account. If the GHG budget source is also subject to the CAIR NO_x Ozone Season Trading Program, CAIR NO_x Annual Trading Program, or CAIR SO₂ Trading Program then, for a GHG Budget Trading Program compliance account, this natural person shall be the same person as the alternate CAIR designated representative under such programs. If the GHG budget source is also subject to the Acid Rain Program, then for a GHG Budget Trading Program compliance account, this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.

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

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

(j) *Award.* The determination by the REGULATORY AGENCY of the number of GHG allowances to be recorded in the compliance account of a GHG budget unit for Early Reduction GHG Allowances pursuant to

XX-5. 4, or the determination by the REGULATORY AGENCY of the number of GHG offset allowances to be recorded in the general account of a project sponsor pursuant to XX-10.7. Award is a type of allocation.

(k) *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.

(l) *Clean Air Interstate Rule (CAIR) NO_x Annual Trading Program.* CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96 subparts AA through II and 40 CFR 51.123(o)(1) or (2) or established by the Administrator in accordance with subparts AA through II of 40 CFR Part 97 and 40 CFR 51.123(p) and 52.35, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

(m) *CAIR NO_x Ozone Season Trading Program.* CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of 40 CFR Part 96 and 40 CFR 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) or established by the Administrator in accordance with subparts AAAA through IIII of 40 CFR Part 97 and 40 CFR 51.123(ee) and 52.35, as a means of mitigating interstate transport of ozone and nitrogen oxides.

(n) *CAIR SO₂ Trading Program.* CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of 40 CFR Part 96 and 40 CFR 51.124(o)(1) or (2) or established by the Administrator in accordance with subparts AAA through III of 40 CFR Part 97 and 40 CFR 51.124(r) and 52.36, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

(o) *CO₂ equivalent.* (CO₂e). A measure for comparing carbon dioxide with other GHGs, based on the quantity of any given GHG multiplied by its Global Warming Potential (GWP).

(p) *Cogeneration facility.* A stationary boiler or stationary combustion turbine that has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(1) For a topping-cycle cogeneration unit, has useful thermal energy not less than 5 percent of total energy output and useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(2) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

(q) *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.

(r) *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.

(s) *Commence operation.* To begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber or start-up of any processes that produce GHG emissions. For electricity importers and fuel suppliers, to begin to import electricity or supply fuel into [JURISDICTION].

(t) *Compliance account.* A MATS account, established by the REGULATORY AGENCY or its agent for a GHG budget source under Subpart XX-6, in which the GHG allowance allocations for the source are initially recorded and in which are held GHG allowances available for use by the source for a control period for the purpose of meeting the GHG requirements of XX-1.5(c).

(u) *Compliance Obligation.* The requirement to surrender sufficient GHG allowances to cover actual GHG emissions during the control period.

(v) *Control period.* The control period is a three-calendar-year time period. The first control period is from January 1, 20XX to December 31, 20XX+2. Each subsequent sequential three-calendar-year period is a separate control period.

(w) *Covered Entity.* Any entity subject to the cap-and-trade program by meeting the applicability requirements of XX-1.4.

(x) *Electricity Source.* A stationary source that includes one or more units that are fossil fuel-fired and serve a generator that produces electricity for sale.

(y) *Eligible biomass.* Eligible biomass includes: sustainably harvested woody and herbaceous sources that are available on a renewable or recurring basis, including dedicated energy crops and trees, agricultural crops and their residues, aquatic plants, wood and wood residues; residues and byproducts from wood, pulp, and paper product facilities; animal wastes; processed agricultural products and agricultural processing wastes; other eligible organic wastes; and biogas and neat liquid biofuels derived from such sources. Sustainably harvested and eligible organic wastes will be determined by the REGULATORY AGENCY.

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

(aa) *First Jurisdictional Deliverer (FJD).* FJD means the owner or operator of an electricity generating source in a MGGRA Partner jurisdiction or an electricity importer that is jurisdictional to the regulatory authority of a MGGRA Partner jurisdiction or the immediate downstream purchaser or recipient of electricity from a non-jurisdictional electricity importer.

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

(ac) *Fossil fuel-fired.* A fossil fuel-fired unit is a unit that, alone or in combination with any other fuel, combusts fossil fuels.

(ad) *Fuel supplier.* Suppliers of petroleum products, whether refiners or importers.

(ae) *General account.* A MATS account, established under Subpart XX-6, that is not a compliance account.

(af) *Greenhouse Gas (GHG).* An atmospheric gas that contributes to the greenhouse effect by absorbing infrared radiation produced by solar warming of the Earth's surface. GHGs covered by this rule are carbon dioxide, methane, nitrous oxide, hydro-fluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(ag) *GHG allowance.* A limited authorization by the REGULATORY AGENCY or a participating jurisdiction under the GHG Budget Trading Program to emit up to one CO₂e metric ton of GHG, subject to all applicable limitations contained in this Part.

(ah) *GHG allowance deduction or deduct GHG allowances.* The permanent withdrawal of GHG allowances by the REGULATORY AGENCY or its agent from a MATS compliance account to account for the number of metric tons of GHG emitted from a GHG budget source for a control period, determined in accordance with Subpart XX-8, or for the forfeit or retirement of GHG allowances as provided by this Part.

(ai) *GHG allowance price.* The price for GHG allowances in the GHG Budget Trading Program for a particular time period as determined by the REGULATORY AGENCY or its agent, calculated based on a volume-weighted average of transaction prices reported to the REGULATORY AGENCY or its agent, and taking into account prices as reported publicly through reputable sources.

(aj) *GHG allowances held or hold GHG allowances.* The GHG allowances recorded by the REGULATORY AGENCY or its agent, or submitted to the REGULATORY AGENCY or its agent for recordation, in accordance with Subparts XX-6 and XX-7, in a MATS account.

(ak) *GHG allowance transfer deadline.* Midnight of the March 1 occurring after the end of the relevant control period or, if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which GHG allowances must be submitted for recordation in a GHG budget source's compliance account in order for the source to meet the GHG requirements of XX-1.5(c) for the control period immediately preceding such deadline.

(al) *GHG authorized account representative.* For a GHG budget source and each GHG budget unit at the source, the natural person who is authorized by the owners and operators of the source and all GHG budget units at the source, in accordance with Subpart XX-2, to represent and legally bind each owner and operator in matters pertaining to the GHG Budget Trading Program or, for a general account, the natural person who is authorized, under Subpart XX-6, to transfer or otherwise dispose of GHG allowances held in the general account. If the GHG budget source is also subject to the CAIR NO_x Ozone Season Trading Program, CAIR NO_x Annual Trading Program, or CAIR SO₂ Trading Program then, for a GHG Budget Trading Program compliance account, this natural person shall be the same person as the CAIR designated representative under such programs. If the GHG budget source is also subject to the Acid Rain Program, then for a GHG Budget Trading Program compliance account, this natural person shall be the same person as the designated representative under the Acid Rain Program.

(am) *GHG budget emissions limitation.* For a GHG budget source, the metric tonnage equivalent, in GHG emissions in a control period, of the GHG allowances available for compliance deduction for the source for a control period.

(an) *GHG budget permit.* The legally binding permit issued by the REGULATORY AGENCY pursuant to [Insert Reference to JURISDICTION's Permitting Regulation(s)] to a GHG budget source or GHG budget unit which specifies the GHG Budget Trading Program requirements applicable to the GHG budget source, to each GHG budget unit at the GHG budget source, and to the owners and operators and the GHG authorized account representative of the GHG budget source and each GHG budget unit.

(ao) *GHG budget source.* A source that includes one or more GHG budget units.

(ap) *GHG Budget Trading Program.* A multi-jurisdiction GHG air pollution control and emissions reduction program established pursuant to this Part and corresponding regulations in other jurisdictions as a means of reducing emissions of GHG from GHG budget sources.

(aq) *GHG budget unit.* A unit that is subject to the GHG Budget Trading Program requirements under section XX-1.4.

(ar) *GHG offset allowance.* A GHG allowance that is awarded to the sponsor of a GHG emissions offset project pursuant to section XX-10.7 and is subject to the relevant compliance deduction limitations of section XX-6.5(a)(4).

(as) *GHG offset project.* An offset project includes all equipment, materials, items, or actions directly related to the reduction of GHG emissions or the sequestration of carbon specified in a consistency application submitted pursuant to section XX-10.4. Equipment, materials, items, or actions unrelated to an offset project reduction of GHG emissions or the sequestration of carbon, but occurring at a location where an offset project occurs, shall not be considered part of an offset project, unless specified at section XX-10.5.

(at) *Global Warming Potential (GWP)*. A measure of the radiative efficiency (heat-absorbing ability) of a particular gas relative to that of carbon dioxide (CO₂) 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 CO₂. Global Warming Potentials used in this Part are defined in [reference monitoring and reporting rule.]

(au) *Industrial Source*. Any stationary source that:

(1) is not an electricity source; and

(2) is in—

(i) the manufacturing sector (as defined in North American Industrial Classification System codes 31, 32, and 33); or

(ii) the natural gas processing or natural gas pipeline transportation sector (as defined in North American Industrial Classification System codes 211112 or 486210).

(av) *Load Serving Entity*. Load serving entities provide electric service to end-users and wholesale customers.

(aw) *Local Distribution Company*. Any entity, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(ax) *Low-Carbon Technology Commercialization Fund*. A regional fund, supported by allowance value allocated by the participating jurisdictions in order to foster low-carbon technology demonstration, deployment and commercialization.

(ay) *Market Advisory and Cost Containment Committee (MACCC)*. A committee established by the participating jurisdictions, staffed by the RAO, responsible for market oversight and cost-containment.

(az) *Midwest Allowance Tracking System account*. An account in MATS established by the REGULATORY AGENCY or its agent for purposes of recording the allocation, holding, transferring, or deducting of GHG allowances.

(ba) *Merchant Power*. Generators of electricity whose rates are not set through actions of state utility commissions, excluding municipal utilities and rural electric cooperatives.

(bb) *Metric ton or metric tonnage*. Any metric ton. For the purpose of determining compliance with the GHG requirements of XX-1.5(c), total metric tons for a control period shall be calculated in accordance with Subpart XX-8, with any remaining fraction of a metric ton equal to or greater than 0.50 metric ton deemed to equal one metric ton and any fraction of a metric ton less than 0.50 metric ton deemed to equal zero metric tons.

(bc) *NAME OF JURISDICTION GHG Budget Trading Program base budget*. The annual amount of GHG metric tons available in NAME OF JURISDICTION for allocation in a given allocation year, in accordance with the GHG Budget Trading Program. GHG offset allowances allocated to project sponsors are separate from and additional to GHG allowances allocated from the NAME OF JURISDICTION GHG Budget Trading Program Base Budget.

(bd) *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.

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

(bf) *Output.* The amount of a good or service produced by a covered entity; for electricity sources, MWh of electricity produced, for industrial sources the units of production included in the Federal Reserve's Industrial Production and Capacity Utilization Report or another metric approved by the REGULATORY AGENCY.

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

(1) Any holder of any portion of the legal or equitable title in a GHG budget unit; or

(2) Any holder of a leasehold interest in a GHG 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 GHG budget unit; or

(3) Any purchaser of power from a GHG budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

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

(bh) *Participating Jurisdiction.* A jurisdiction that has established a corresponding regulation as part of the GHG Budget Trading Program and that has signed a Memorandum of Understanding with the [JURISDICTION] to allow inter-state trading of allowances and emissions offsets.

(bi) *Province.* Any Canadian province.

(bj) *Receive or receipt of.* With regard to GHG allowances, the movement of GHG allowances by the REGULATORY AGENCY or its agent from one MATS account to another, for purposes of allocation, transfer, or deduction.

(bk) *Recordation, record, or recorded.* With regard to GHG allowances, the movement of GHG allowances by the REGULATORY AGENCY or its agent from one MATS account to another, for purposes of allocation, transfer, or deduction.

(bl) *Regional Advisory Organization.* The RAO is established by the participating jurisdictions to reduce administrative costs, improve program transparency and consistency, provide market oversight and recommend cost containment measures to the jurisdictions. The RAO is a technical assistance organization only and does not have regulatory or enforcement authority.

(bm) *Regional Low-Carbon Technology Commercialization Fund.* A competitive regional fund that is supported by allowance value in order to foster low-carbon technology demonstration, deployment and commercialization.

(bn) *Regulatory Agency.* The Jurisdiction's Agency charged with administering the GHG Budget Program.

(bo) *Serial number.* When referring to GHG allowances, the unique identification number assigned to each GHG allowance by the REGULATORY AGENCY or its agent under section XX-6.4(c).

(bp) *Source.* Any governmental, institutional, commercial, or industrial structure, installation, plant, building, or source that emits or has the potential to emit any air pollutant; or distributes petroleum-based or coal-based liquid fuel, petroleum coke, or natural gas liquid that when combusted will emit any air pollutant; or imports electricity whose production emits or has the potential to emit any air pollutant. A "source," including a "source" with multiple units, shall be considered a single "source."

(bq) *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.

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

- (1) In person;
- (2) By Postal Service; or
- (3) 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.

(bs) *System Benefits Charge.* A charge on a consumer’s bill from an electric distribution company to pay for the costs of public benefits such as low-income assistance, energy efficiency, and renewable energy.

(bt) *Unit.* A fossil fuel-fired stationary boiler, combustion turbine, combined cycle system, or any industrial process equipment that emits GHGs.

(bu) *Unit operating day.* A calendar day in which a unit emits any GHG.

(bv) *Utility.* Includes electricity and natural gas utilities whose rates are set through actions of a state utility commission, such as gas local distribution companies, electric load-serving entities in regulated states and electric distribution companies in deregulated states. Utility also includes municipal utilities and rural electric cooperatives, but does not include merchant power.

XX-1.3 Measurements, abbreviations and acronyms.

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

- (1) CO₂-carbon dioxide.
- (2) GHG-greenhouse gas
- (3) hr-hour.
- (4) lb-pounds.
- (5) MWe-megawatt electrical.
- (6) MMBtu-one million British thermal units

XX-1.4 Applicability.

(a) Any source or entity that, at any time, meets the requirements of paragraph (a)(1), (a)(2) or (a)(3) of this section, shall be a GHG budget unit or a GHG budget source and subject to the requirements of this Part.

(1) Any source that emits over 25,000 metric tons CO₂e annually in combined emissions, based on a three year rolling average and excluding emissions from combustion of eligible biomass, from one or more of the categories listed in this paragraph. For sources that commenced operation prior to the start of the first compliance period, this determination shall be based on average annual emissions over the three years immediately prior to the first compliance period, using emission data collected pursuant to XX-8. For sources that commence operation after the start of the first compliance period, this determination shall be based on emission data from the first full year of operation.

(i) General stationary fuel combustion at industrial sources

(ii) Process or other emissions, excluding biogenic emissions of carbon dioxide from fermentation processes, from industrial sources in the following categories [*This list is tied to the development of the monitoring rule and assumes that appropriate monitoring metrics are available. If appropriate monitoring metrics are not available for a category process emissions from that category will not be included*]:

- (A) Adipic acid manufacturing
- (B) Aluminum manufacturing
- (C) Ammonia manufacturing
- (D) Carbon dioxide transfer recipients
- (E) Cement manufacturing
- (F) Coal mine fugitive emissions (active and abandoned)
- (G) Coal storage
- (H) Cogeneration
- (I) Electronics Manufacturing
- (J) Ferroalloy production
- (K) Glass Production and other uses of carbonates
- (L) HCFC-22 production
- (M) Hydrogen production
- (N) Industrial wastewater
- (O) Iron and steel manufacturing
- (P) Lead production
- (Q) Lime manufacturing
- (R) Magnesium production
- (S) Natural gas transmission and distribution systems
- (T) Nitric acid manufacturing
- (U) Nonroad equipment at facilities
- (V) Oil and gas production & gas processing
- (W) Petrochemical production
- (X) Petroleum refineries
- (Y) Phosphoric acid production
- (Z) Pulp and paper manufacturing
- (AA) Refinery fuel gas
- (BB) SF₆ from electrical equipment
- (CC) Soda ash manufacturing
- (DD) Zinc production

(2) Any first jurisdictional deliverer of electricity, including generators, retail providers, and marketers, that provide electricity into [JURISDICTION], the production of which generates greater than 25,000 metric tons CO₂e annually, based on a three year rolling average and excluding emissions from combustion of eligible biomass. For sources that commenced operation prior to the start of the first compliance period, this determination shall be based on average annual emissions over the three years immediately prior to the first

compliance period, using emission data collected pursuant to XX-8. For sources that commence operation after the start of the first compliance period, this determination shall be based on emission data from the first full year of operation.

(3) Any fuel supplier within [JURISDICTION] that distributes liquid transportation fuel, petroleum coke, natural gas, propane, or heating fuel in quantities that when combusted would emit over 25,000 metric tons CO₂e annually, based on a three year rolling average and excluding emissions from combustion of eligible biomass. For sources that commenced operation prior to the start of the first compliance period, this determination shall be based on average annual emissions over the three years immediately prior to the first compliance period, using emission data collected pursuant to XX-8. For sources that commence operation after the start of the first compliance period, this determination shall be based on emission data from in the first full year of operation.

(b) *Lack of Data.* In the event that a source does not have three years of emission data meeting the requirements of XX-8, the REGULATORY AGENCY may make the determination of applicability based on the years of available emission data collected pursuant to XX-8.

(1) If the REGULATORY AGENCY determines that emission data collected pursuant to the requirements of XX-8 is not available for any year of three years immediately prior to the first compliance period, a source that commenced operation prior to the start of the first compliance period may petition to use other verified emissions data for that year to demonstrate that the requirements of this Part do not apply.

(c) *Exemptions.*

(1) *Small Electricity Generators.* Notwithstanding subdivision (a) of this section, a unit that is an electricity source with a nameplate capacity less than 25MW shall not be considered a GHG budget unit.

(2) *Budget Units that Reduce Emissions.* If a GHG budget unit's annual emissions drop below 25,000 metric tons CO₂ equivalent for three year consecutive years, excluding emissions from combustion of eligible biomass, the unit may apply for an exemption to not be considered a GHG budget unit in the subsequent compliance period, provided that:

(i) The unit's emissions remain below 25,000 metric tons CO₂ equivalent in the subsequent compliance period; and

(ii) The unit returns all allowances purchased at below market fees for the years in which they will no longer be part of the program.

XX-1.5 Standard Requirements.

(a) *Permit requirements.* [Each Jurisdiction's text for this subdivision will likely be different because the Jurisdictions have unique permitting requirements. The text below illustrates how this subdivision could be drafted and does not necessarily represent what an individual Jurisdiction will propose.] The GHG authorized account representative of each GHG budget source required to have an operating permit pursuant to [Reference to JURISDICTION's Permitting Regulation(s)] of this Title and each GHG budget unit required to have an operating permit pursuant to [Insert Reference to JURISDICTION's Permitting Regulation(s)] of this Title shall submit to the REGULATORY AGENCY a complete GHG budget permit application under section XX-3.3 in accordance with the deadlines specified in section XX-3.2. An owner or operator shall not operate any emission units located at each GHG budget source unless a timely and administratively complete application for an operating permit has been received by the REGULATORY AGENCY.

(b) *Monitoring requirements.*

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

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

(c) *GHG requirements.*

(1) The owners and operators of each GHG budget source and each GHG budget unit shall hold GHG allowances available for compliance deductions under section XX-6.5, as of the GHG allowance transfer deadline, in the source's compliance account in an amount not less than the total GHG emissions for the control period from the GHG budget source, including all GHG budget units at the source, as determined in accordance with Subparts XX-6 and XX-8.

(2) Each metric ton of GHG emitted in excess of the GHG budget emissions limitation shall constitute a separate violation of this Part and applicable law.

(3) A GHG budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of the start of the first compliance period or the date on which the unit commences operation.

(4) GHG allowances shall be held in, deducted from, or transferred among MATS accounts in accordance with Subparts XX-5, XX-6, and XX-7, and section XX-10.7.

(5) A GHG allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period that ends prior to the year for which the GHG allowance was allocated, except as allowed in XX-6.7. A GHG offset allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, beyond the applicable percent limitations set out in paragraph XX-6.5(a)(4).

(6) A GHG allowance under the GHG Budget Trading Program is a limited authorization by the REGULATORY AGENCY or a participating jurisdiction to emit one metric ton of GHG in accordance with the GHG Budget Trading Program. No provision of the GHG Budget Trading Program, the GHG budget permit application, or the GHG budget permit or any provision of law shall be construed to limit the authority of the REGULATORY AGENCY or a participating jurisdiction to terminate or limit such authorization.

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

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

(1) Forfeit the GHG allowances required for deduction under paragraph XX-6.5(d)(1), provided GHG 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 XX-6.5(d)(2).

(e) *Recordkeeping and reporting requirements.*

(1) Unless otherwise provided, the owners and operators of the GHG budget source and each GHG 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 REGULATORY AGENCY.

(i) The account certificate of representation for the GHG authorized account representative for the source and each GHG 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 XX-2.4, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such

documents are superseded because of the submission of a new account certificate of representation changing the GHG authorized account representative.

(ii) All emissions monitoring information, in accordance with Subpart XX-8 and 40 CFR 75.57.

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

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

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

(f) *Liability.*

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

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

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

(g) *Effect on other authorities.*

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

XX-1.6 Computation of time.

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

XX-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 XX-2 GHG Authorized Account Representative for GHG Budget Sources

XX-2.1 Authorization and responsibilities of the GHG authorized account representative.

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

(b) The GHG authorized account representative of the GHG budget source shall be selected by an agreement binding on the owners and operators of the source and all GHG budget units at the source.

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

(d) No GHG budget permit shall be issued, and no MATS account shall be established for a GHG budget source, until the REGULATORY AGENCY or its agent has received a complete account certificate of representation under section XX-2.4 for a GHG authorized account representative of the source and the GHG budget units at the source.

(e) Each submission under the GHG Budget Trading Program shall be submitted, signed, and certified by the GHG authorized account representative for each GHG budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the GHG authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the GHG budget sources or GHG 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 REGULATORY AGENCY or its agent will accept or act on a submission made on behalf of owners or operators of a GHG budget source or a GHG budget unit only if the submission has been made, signed, and certified in accordance with subdivision (e) of this section.

XX-2.2 Alternate GHG authorized account representative.

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

(b) Upon receipt by the REGULATORY AGENCY or its agent of a complete account certificate of representation under section XX-2.4, any representation, action, inaction, or submission by the alternate GHG authorized account representative shall be deemed to be a representation, action, inaction, or submission by the GHG authorized account representative.

(c) Except in this section and subdivision XX-2.1(a), section XX-2.3, section XX-2.4, and section XX-6.2, whenever the term “GHG authorized account representative” is used in this Part, the term shall be construed to include the alternate GHG authorized account representative.

XX-2.3 Changing the GHG authorized account representatives and the alternate GHG authorized account representative; changes in the owner as and operators.

(a) *Changing the GHG authorized account representative.* The GHG authorized account representative may be changed at any time upon receipt by the REGULATORY AGENCY or its agent of a superseding complete account certificate of representation under section XX-2.4. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous GHG authorized account representative or alternate GHG authorized account representative prior to the time and date when the REGULATORY AGENCY or its agent receives the superseding account certificate of representation shall be binding on the new GHG authorized account representative and the owners and operators of the GHG budget source and the GHG budget units at the source.

(b) *Changing the Alternate GHG Authorized Account Representative.* The alternate GHG authorized account representative may be changed at any time upon receipt by the REGULATORY AGENCY or its agent of a superseding complete account certificate of representation under section XX-2.4. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous or alternate GHG authorized account representative or alternate GHG authorized account representative prior to the time and date when the REGULATORY AGENCY or its agent receives the superseding account certificate of representation shall be binding on the new alternate GHG authorized account representative and the owners and operators of the GHG budget source and the GHG budget units at the source.

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

(1) In the event a new owner or operator of a GHG budget source or a GHG 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 GHG authorized account representative and any alternate GHG authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the REGULATORY AGENCY, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a GHG budget source or a GHG budget unit, including the addition of a new owner or operator, the GHG authorized account representative or alternate GHG authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

XX-2.4 Account certificate of representation.

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

(1) Identification of the GHG budget source and each GHG budget unit at the source for which the account certificate of representation is submitted;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number of the GHG authorized account representative and any alternate GHG authorized account representative;

(3) A list of the owners and operators of the GHG budget source and of each GHG budget unit at the source;

(4) The following certification statement by the GHG authorized account representative and any alternate GHG authorized account representative: “I certify that I was selected as the GHG authorized account representative or alternate GHG authorized account representative, as applicable, by an agreement

binding on the owners and operators of the GHG budget source and each GHG budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the GHG Budget Trading Program on behalf of the owners and operators of the GHG budget source and of each GHG 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 REGULATORY AGENCY or a court regarding the source or unit.”; and

(5) The signature of the GHG authorized account representative and any alternate GHG authorized account representative and the dates signed.

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

XX-2.5 Objections concerning the GHG authorized account representative.

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

(b) Except as provided in subdivision XX-2.3(a) or (b), no objection or other communication submitted to the REGULATORY AGENCY or its agent concerning the authorization, or any representation, action, inaction, or submission of the GHG authorized account representative shall affect any representation, action, inaction, or submission of the GHG authorized account representative or the finality of any decision or order by the REGULATORY AGENCY or its agent under the GHG Budget Trading Program.

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

XX-2.6 Delegation by GHG authorized account representative and alternate GHG authorized account representative.

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

(b) An alternate GHG authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the REGULATORY AGENCY or its agent under this part.

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

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

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

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

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

(i) "I agree that any electronic submission to the REGULATORY AGENCY or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a GHG authorized account representative or alternate GHG authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subdivision XX-2.6(d) shall be deemed to be an electronic submission by me."

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

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

(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 GHG authorized account representative or alternate GHG authorized account representative submitting such notice of delegation.

Subpart XX-3 Permits

[Each Jurisdiction's text for this subdivision will likely be different because the Jurisdictions have unique permitting requirements. The text below illustrates how this subdivision could be drafted and does not necessarily represent what an individual Jurisdiction will propose.]

XX-3.1 General GHG budget permit requirements.

(a) Each GHG budget source must have a legally enforceable permit issued by the REGULATORY AGENCY pursuant to [Reference to JURISDICTION's Permitting Regulation(s)] of this Title.

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

XX-3.2 Submission of GHG budget permit applications.

(a) The GHG authorized account representative for any GHG budget source shall submit a complete GHG budget permit application under section XX-3.3 to the REGULATORY AGENCY no later than the start of the first compliance period, or at a minimum 12 months before the date on which a new GHG budget source, or a new unit at an existing GHG budget source, is projected to commence operations. The GHG authorized account representative of each GHG budget source shall:

(1) Submit a complete GHG budget permit application under section XX-3.3 in accordance with the deadlines specified in section XX-3.2(a). An application submittal shall be considered an administratively complete application if it contains reasonable responses to all requests for information as detailed in XX-3.3 and contains a certification by a responsible official which states that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

(2) Submit in a timely manner any supplemental information that the REGULATORY AGENCY determines is necessary in order to review the GHG budget permit application and issue or deny a GHG budget permit.

XX-3.3 Information requirements for GHG budget permit applications.

(a) An administratively complete GHG budget permit application may include the following elements concerning the GHG budget source for which the application is submitted, in a format prescribed by the REGULATORY AGENCY:

(1) Identification of the GHG budget source, including:

(i) Plant name; and

(ii) The ORIS (Office of Regulatory Information Systems) or source code assigned to the source by the Energy Information Administration of the United States Department of Energy or the appropriate metrics under by the Federal Government of Canada, if applicable.

(2) Description and identification of each GHG budget unit at the GHG budget source, which shall include a the size and type of emission unit including any GHG pollution control equipment. The description shall also specify the proposed operating schedule of the equipment and provide the capture and removal efficiencies of the control equipment. .

(3) Unless otherwise provided, the owners and operators of the GHG source and each GHG unit at the source shall keep on site at the source all emission monitoring information, compliance reports and records for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the REGULATORY AGENCY.

Subpart XX-4 Compliance Certification

XX-4.1 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which a GHG budget source is subject to the GHG requirements of XX-1.5(c), the GHG authorized account representative of the source shall submit to the REGULATORY AGENCY by the March 1 following the relevant control period, a compliance certification report.

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

(1) Identification of the source and each GHG budget unit at the source;

(2) The total metric tons of GHG emissions from the source and each GHG budget unit at the source, monitored and reported in compliance with [reference monitoring rule];

(3) At the GHG authorized account representative's option, the serial numbers of the GHG allowances that are to be deducted from the source's compliance account under section XX-6.5 for the control period, including the serial numbers of any GHG offset allowances that are to be deducted subject to the limitations of paragraph XX-6.5(a)(4); and

(4) The compliance certification under subdivision (c) of this section.

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

- (1) Whether the source was operated in compliance with the GHG requirements of XX-1.5(c); and
- (2) Whether the source was operated in compliance with the requirements of [reference monitoring rule].

XX-4.2 REGULATORY AGENCY’s action on compliance certifications.

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

(b) The REGULATORY AGENCY or its agent will deduct GHG allowances from or transfer GHG allowances to a source’s compliance account, as described in Part XX-6, based on the information in the compliance certifications or other submissions, as adjusted under subdivision (a) of this section.

Subpart XX-5 GHG Allowance Allocations

[Each Jurisdiction’s text for this subdivision is likely to be different because jurisdictions have substantial discretion in allocating allowances and using allowance value. Any percentages or other numbers, or descriptions of how to use allowance value, given in this section primarily come from the Advisory Group’s Draft Final Design Recommendations.]

XX-5.1 Allowance Value

(a) Proceeds from the sale at auction or fee-based allocation of any allowance under this part should be used for climate-related purposes such as the following:

- (1) Accelerating transformational investment;
- (2) Further reducing GHG emissions;
- (3) Mitigating cost or other adverse impacts on:
 - (i) Consumers
 - (ii) Industry
 - (iii) Workers;

(4) Addressing adverse impacts of climate change on communities, human health, and natural resources;

(b) The value of any allowance allocated under this program must be used for climate-related purposes, including costs of compliance, for each covered sector, and may not lead to windfall profits or flow to utility stockholders. Failure to use the allowance value for climate related purposes is a violation of this part. The REGULATORY AGENCY shall audit a representative sample of covered sources to ensure that the value of allowances distributed have been used exclusively for climate related purposes. Climate related purposes for each sector include:

- (1) Utility Sector
 - (i) Mitigating energy costs for consumers directly;
 - (ii) Implementation of low income weatherization and other conservation and efficiency programs;

(iii) The REGULATORY AGENCY may approve plans allowing funds to be retained for use locally for permitted purposes by municipals and cooperative utilities not otherwise subject to regulation by a jurisdiction.

(2) Merchant Power:

(i) Lowering the cost of the power to purchasers supplied by the merchant from the plant at issue;

(ii) Mitigating the costs of compliance for Midwestern facilities;

(iii) Investing in low-carbon technologies in the region.

(3) Industrial Sector

(i) Improving the competitiveness of or lowering the costs of compliance for facilities located within participating jurisdictions either directly or through investments that predominantly benefit facilities located within the participating jurisdictions.

(4) Transportation sector:

(i) Covering net costs of compliance.

XX-5.2 NAME OF RELEVANT JURISDICTION GHG trading program base budget.

(a) The NAME OF JURISDICTION GHG Budget Trading Program base budget for each calendar year will be the number of emission allowances indicated in the following table:

Calendar Year	Base Budget of Emission Allowances
First Year of First Compliance Period	
+ 1	
+2	
+3	
+4	
+5	
+6	
+7	
+8	
+9	
+10	
+11	
+12	
+13	
+14	
+15	
+16	
+17	
+18	
+ 19 and so on	
2050 and each year thereafter	

XX-5.3 Timing requirements for GHG allowance allocations.

(a) By the start of the first compliance period, the REGULATORY AGENCY will determine GHG allowance allocations under subparts XX-5.4 and XX-5.5 for the allocation years in the first compliance period and the first year of the second compliance period.

(b) By January 1 of each year thereafter, the REGULATORY AGENCY will allocate all GHG allowances under subparts XX-5.4 and XX-5.5 for the allocation year that commences in the year that is three years after the applicable deadline for allocation under this subdivision.

(c) Cost Containment Provisions. If the REGULATORY AGENCY implements a cost containment action in accordance with XX-9, the allowance allocations may be adjusted as necessary to promote a strong market of ERCs.

XX-5.4 GHG allowance allocations for Special Purposes.

(a) *Regional low-carbon technology commercialization fund.* The REGULATORY AGENCY will allocate [2 – 5%] percent of the allowances in the annual NAME OF JURISDICTION GHG Budget Trading Program base budget, rounded to the nearest whole number, to the Regional Low-Carbon Technology Commercialization Fund. These allowances will be auctioned.

(b) *Allowance Reserve Pool.* The REGULATORY AGENCY will allocate 2% percent of the allowances in the annual NAME OF JURISDICTION GHG Budget Trading Program base budget, rounded to the

nearest whole number, to the Allowance Reserve Pool for market reliability and cost containment activities, pursuant to Subpart XX-9.

(c) *Early reduction allowances.* The REGULATORY AGENCY will set aside [2 - 5%] of the allowances in the Jurisdiction base budget in the first year of the first compliance period, rounded to the nearest whole number, to be awarded as early reduction allowances pursuant to subpart XX-5.5(b).

(d) *Cogeneration.* The REGULATORY AGENCY will set aside [2%] of the allowances in the annual NAME OF JURISDICTION GHG Budget Trading Program base budget, rounded to the nearest whole number, to be allocated to cogeneration facilities pursuant to subpart XX-5.5(c).

XX-5.5 GHG Allowance Allocations to Covered Entities

(a) The NAME OF JURISDICTION GHG Budget Trading Program base budget for each calendar year shall, after designating allowances for the special purposes enumerated in XX-5.3, designate allowances for specific sectors that contain covered entities.

(1) Allocation among sectors is based on each sector's proportion of [the jurisdiction's] emissions in the two years preceding the start of the first compliance period:

- (i) Utility Sector – X%
- (ii) Merchant Power Sector – X%
- (iii) Industrial Sector – X%
- (iv) Transportation Fuel Providers – X%

(2) The number of allowances available to each sector shall be rounded to the nearest whole number.

(b) *Early Reduction Allowances.*

(1) *Availability of early reduction allowances.*

(i) The number of allowances set aside by XX-5.3(c) will be divided in the proportion shown in XX-5.4(a) and rounded to the nearest whole number to be distributed as ERAs for early action projects in the covered sectors:

- (A) Utility Sector – # of Allowances
- (B) Merchant Power Sector – # of Allowances
- (C) Industrial Sector – # of Allowances
- (D) Transportation Fuel Providers – # of Allowances

(ii) Any allowances designated as ERAs for a covered sector that are not awarded pursuant to this subpart shall be placed in the auction pool described in XX-5.4(c).

(2) *Eligibility for early reduction allowances.* Early reduction allowances (ERAs) may be awarded to a GHG budget source for reductions in the GHG budget source's GHG emissions (inclusive of all emissions from GHG budget units at the GHG budget source) that are achieved by the source during the early reduction period (2005 through the end of the year prior to the start of the first compliance period), subject to the following restrictions:

(i) Total source shutdowns or emission decreases solely due to decreased production shall not be eligible for ERAs.

(ii) Reductions of GHG emissions to comply with other regulatory requirements concerning GHGs shall not be eligible for ERAs.

(3) *Application for early reduction allowances.* The GHG budget source must submit its application for the award of ERAs by July 1 of the first year of the first compliance period.

(i) The GHG budget source must demonstrate that all GHG budget units that existed at the source during the baseline period (2002, 2003, and 2004) are included as GHG budget units for the early action period. New GHG budget units added at the GHG budget source must also be accounted for during the early action period.

(ii) The GHG budget source must demonstrate that the data submitted in support of the early reduction allowance application was recorded in compliance with the requirements of Subpart XX-8, or the requirements of an approved registry, for all of the baseline years and the early reduction years.

(4) *Methodology.* The REGULATORY AGENCY will calculate the number of ERAs to be awarded to a particular GHG budget source for the early action period pursuant to the following methodology:

(i) One allowance for each CO₂-equivalent metric ton of GHG emissions reduced during the early action period, calculated as follows:

(A) When total output during the early action period is less than total output at the GHG budget source during the baseline period, then ERAs shall be calculated as follows:

$$\text{ERAs} = (\text{AER}_{\text{BASELINE}} \times \text{O}_{\text{EAP}}) - (\text{AER}_{\text{EAP}} \times \text{O}_{\text{EAP}})$$

where:

“AER_{BASELINE}” is the average GHG emissions rate resulting from all of the GHG budget units at the GHG budget source during the baseline period (in metric tons CO₂-eq per unit of production);

“AER_{EAP}” is the average GHG emissions rate resulting from all of the GHG budget units at the GHG budget source during the early reduction period (in metric tons CO₂-eq per unit of production); and

“O_{EAP}” is the total output from all GHG budget units at the GHG budget source during the early action period.

(B) If total output from all GHG budget units at the GHG budget source during the early reduction period is equal or greater than total output from all the GHG budget units at the GHG budget source during the baseline period, then:

$$\text{ERAs} = \text{E}_{\text{BASELINE}} - \text{E}_{\text{EAP}}$$

where:

“E_{BASELINE}” are total GHG emissions from the all of the GHG budget units at the GHG budget source during the baseline period (in metric tons); and

“E_{EAP}” are total GHG emissions from the all of the GHG budget units at the GHG budget source during the early action period (in metric tons).

Both baseline and early action period emissions shall be calculated using the procedures in [reference monitoring rule] or, for projects that began prior to the implementation of the monitoring rule, another protocol approved by the REGULATORY AGENCY.

(5) *Award and Recordation.* Once the REGULATORY AGENCY confirms a GHG budget source’s early reductions of GHG emissions, it will award the ERAs in accordance with XX-6.4(d).

(i) If the number of ERAs applied for and approved by the REGULATORY AGENCY for any given covered sector is more than the available amount, the REGULATORY AGENCY shall reduce the number of allowances awarded to each individual source on a pro-rata basis.

(c) *Allowances for Cogeneration Facilities.* The GHG authorized account representative of a GHG budget unit may annually submit to the REGULATORY AGENCY an application, in a format specified by the REGULATORY AGENCY, to be allocated GHG allowances from the cogeneration set-aside established in XX-5.4(d), if the budget unit is cogeneration facilities.

(1) An application to be allocated GHG allowances from the cogeneration set-aside for a given allocation year must be submitted 60 days prior to the date by which the REGULATORY AGENCY must determine GHG allowance allocations pursuant to subpart XX-5.3.

(2) The REGULATORY AGENCY shall review each allowance allocation application and will allocate GHG allowances pursuant to the following formula: [Jurisdictions have broad discretion to create a suitable formula, for example one that provides allowances equal to the incremental increase in on-site emissions from using CHP.]

(3) If the total number of GHG allowances applied for is less than the available amount under XX-5.4(d), the REGULATORY AGENCY shall allocate to the requested MATS accounts the number of GHG allowances requested in an accepted allowance allocation application, with the remaining allowances allocated to a pool for auction. If the number of GHG allowances applied for is more than the available amount under XX-5.4(d), the REGULATORY AGENCY shall reduce the number of allowances allocated to the requested compliance accounts on a pro-rata basis.

(d) *Distribution of Allowances for Covered Sectors.* The REGULATORY AGENCY will allocate the allowances designated for each covered sector under part XX-5.4(a), rounded to the nearest whole number, either to a pool for auction or directly to sources in the covered sector. The percentage of the allocation for each covered sector to be auctioned or directly allocated is listed in subpart (d).

(1) *Auctions.* The REGULATORY AGENCY shall allocate some portion of the allowances designated for each covered sector, rounded to the nearest whole number, to a pool for auction. By the end of the sixth compliance period, all allowances shall be allocated to a pool for auction, unless the jurisdiction determines that it is necessary to extend the transition period to mitigate ongoing competitiveness concerns for particular sectors.

(i) Auctions of allowances shall be conducted in accordance with the procedures set out in [reference auction rule or procedures].

(ii) (JURISDICTION to specify where money goes - climate-related purposes).

(2) *Direct Allocation.* The REGULATORY AGENCY shall directly allocate the allowances for each covered sector remaining after allowances are allocated to the pool for auction described in (1), rounded to the nearest whole number, to individual sources within that sector. Prior to determining any allocations under this subdivision, the REGULATORY AGENCY shall require that a modest fee be charged to the recipient of each allowance so allocated, as follows, unless it can be shown that such fees will have an adverse impact on the covered sector:

(i) The amount of the fee shall be (modest; amount to be determined by the REGULATORY AGENCY in consultation with other participating jurisdiction) for allowances in the first control period, with such fee increasing by (an amount to be determined by the REGULATORY AGENCY in consultation with other participating jurisdiction) in each subsequent control period.

(A) (JURISDICTION to specify where money goes - climate-related purposes).

(ii) Any entity that is unable or unwilling to pay the fee for an allowance shall not be awarded the allowance.

(iii) Any allowances set aside for direct allocation that are not directly allocated for any reason shall be allocated to [(specify a recipient from the climate-related purposes above) or added to the allowances being auctioned, or may be retired by the REGULATORY AGENCY.]

(iv) A GHG budget source may petition the REGULATORY AGENCY to receive compensatory allowances mitigate ongoing competitiveness concerns. To petition, the GHG budget source shall submit a request in writing to the REGULATORY AGENCY demonstrating the need for additional allowances to be allocated at the modest fee described in of XX-5.5(d)(2) rather than purchased at auction.

(A) The REGULATORY AGENCY shall consider such petition and other materials, and may ask for public comments, and if the REGULATORY AGENCY determines that the granting of such compensatory allowances is justified, shall allocate compensatory allowances to address these concerns or requests from the pool of allowances available for auction under (d)(1).

(e) *Proportion of Allowances for Covered Sectors Distributed to Auction or Directly Allocated.* The allowances designated to each covered sector shall be distributed as follows:

(1) *Utility Sector (Electric and Gas)*

(i) 5% of the allowances in the first three compliance periods shall be allocated to a pool for auction. After the third compliance period, the percentage of allowances allocated to the pool for auction should increase by 10% annually, with the amount of the increase determined by the REGULATORY AGENCY in consultation with other participating jurisdictions. In the seventh compliance period and later, all allowances except those allocated under part (i) shall be allocated to a pool for auction.

(ii) The remaining allowances not allocated under (i) or (ii) will be directly allocated based using the following formula: [Jurisdictions have broad discretion on how to allocate allowances, but the advisory group recommends using the most recent three-year average of historical emissions, with some consideration of users served].

(2) *Merchant Power Sector*

(i) 100% of the allowances shall be designated to the pool for auction..

(A) If the REGULATORY AGENCY determines that all or a portion of the cost of allowances purchased at auction cannot be passed through to the customers of a particular category of merchant plants, the REGULATORY AGENCY may, in the first six compliance periods, directly allocate, using the procedures in XX-5.4(d), some portion of the merchant power generation sector allowances to such entities, provided that they certify that the value of the allowances received will be used to lower the cost of power to purchasers, mitigate the costs of compliance for facilities subject to this rule, or invested in low carbon technologies.

(3) *Industrial Sector*

(i) 5% of the allowances in the third compliance period shall be allocated to a pool for auction. After the third compliance period, the percentage of allowances allocated to the pool for auction should increase by 10% annually, with the amount of the increase determined by the REGULATORY AGENCY in consultation with other participating jurisdictions. In the seventh compliance period and later, all allowances shall be allocated to a pool for auction.

(ii) The remaining allowances not allocated under (i) will be directly allocated based using the following formula: [Jurisdictions have broad discretion on how to allocate allowances, but the advisory group recommends using the most representative consecutive three-year period of emissions in the last 10 years].

(4) *Transportation Fuel Providers*

(i) 100% of the allowances shall be allocated to a pool for auction.

(A) If the REGULATORY AGENCY determines that certain classes of covered entities in the transportation sector will be harmed substantially by the need to purchase all allowances at auction, the REGULATORY AGENCY may, in the first six compliance periods, directly allocate, using the procedures in XX-5.4(d), some portion of the transportation sector allowances to such entities, provided that any entity receiving such an allocation certifies that the value of the allowances received will be used only to cover net costs of compliance.

Subpart XX-6 Midwest Allowance Tracking System

XX-6.1 Midwest Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts.* Consistent with subdivision XX-6.2(a), the REGULATORY AGENCY or its agent will establish one compliance account for each GHG budget source. Allocations of GHG allowances pursuant to Subpart XX-5 and deductions or transfers of GHG allowances pursuant to sections XX-4.2, XX-6.5, XX-6.8, or Subpart XX-7 will be recorded in the compliance accounts in accordance with this Subpart.

(b) *Nature and function of general accounts.* Consistent with subdivision XX-6.2(b), the REGULATORY AGENCY or its agent will establish, upon request, a general account for any person. Transfers of GHG allowances pursuant to Subpart XX-7 will be recorded in the general account in accordance with this Subpart.

XX-6.2 Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete account certificate of representation under section XX-2.4, the REGULATORY AGENCY or its agent will establish a compliance account for each GHG 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 GHG allowances. An application for a general account may designate one and only one GHG authorized account representative and one and only one alternate GHG authorized account representative who may act on behalf of the GHG authorized account representative. The agreement by which the alternate GHG authorized account representative is selected shall include a procedure for authorizing the alternate GHG authorized account representative to act in lieu of the GHG authorized account representative. A complete application for a general account shall be submitted to the REGULATORY AGENCY or its agent and shall include the following elements in a format prescribed by the REGULATORY AGENCY or its agent:

(i) Name, address, e-mail address, telephone number, and facsimile transmission number of the GHG authorized account representative and any alternate GHG authorized account representative;

(ii) At the option of the GHG authorized account representative, organization name and type of organization;

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

(iv) The following certification statement by the GHG authorized account representative and any alternate GHG authorized account representative: "I certify that I was selected as the GHG authorized account representative or the GHG alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to GHG allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the GHG 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 REGULATORY AGENCY or its agent or a court regarding the general account.”;

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

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

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

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

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

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

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

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the GHG authorized account representative or any alternate GHG authorized account representative for the persons having an ownership interest with respect to GHG allowances held in the general account. Each such submission shall include the following certification statement by the GHG authorized account representative or any alternate GHG authorized account representative: “I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the GHG 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 REGULATORY AGENCY or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subparagraph (b)(2)(ii) of this section.

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

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

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

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

(iii) In the event a new person having an ownership interest with respect to GHG 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 GHG authorized account representative and any alternate GHG authorized account representative, and the decisions, orders, actions, and inactions of the REGULATORY AGENCY or its agent, as if the new person were included in such list.

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

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

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

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

(ii) Neither the REGULATORY AGENCY nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the GHG authorized account representative or any alternate GHG authorized account representative for a general account, including private legal disputes concerning the proceeds of GHG allowance transfers.

(5) *Delegation by GHG authorized account representative and alternate GHG authorized account representative.*

(i) A GHG authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the REGULATORY AGENCY or its agent provided for under Subparts XX-6 and XX-7.

(ii) An alternate GHG authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the REGULATORY AGENCY or its agent provided for under Subparts XX-6 and XX-7.

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

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

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

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

(D) The following certification statements by such GHG authorized account representative or alternate GHG authorized account representative:

(6) “I agree that any electronic submission to the REGULATORY AGENCY or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a GHG authorized account representative or alternate GHG authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subparagraph XX-6.2(b)(5)(iv) shall be deemed to be an electronic submission by me.”

(7) “Until this notice of delegation is superseded by another notice of delegation under subparagraph XX-6.2(b)(5)(iv), I agree to maintain an e-mail account and to notify the REGULATORY AGENCY or its agent immediately of any change in my e-mail address unless all delegation authority by me under paragraph XX-6.2(b)(5) is terminated.”

(i) A notice of delegation submitted under subparagraph (iii) of this paragraph shall be effective, with regard to the GHG authorized account representative or alternate GHG authorized account representative identified in such notice, upon receipt of such notice by the REGULATORY AGENCY or its agent and until receipt by the REGULATORY AGENCY or its agent of a superseding notice of delegation by such GHG authorized account representative or alternate GHG 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.

(ii) 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 GHG authorized account representative or alternate GHG authorized account representative submitting such notice of delegation.

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

XX-6.3 GHG Allowance Tracking System responsibilities of GHG authorized account representative.

Following the establishment of a MATS account, all submissions to the REGULATORY AGENCY or its agent pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of GHG allowances in the account, shall be made only by the GHG authorized account representative for the account.

XX-6.4 Recordation of GHG allowance allocations.

(a) By the start of the first compliance period, the REGULATORY AGENCY or its agent will record in the following accounts the GHG allowances for the allocation years in the first compliance period:

(1) In each GHG budget source's compliance account, the GHG allowances allocated for GHG budget units at the source (if any) under subdivision XX-5.3(a); and

(2) The GHG allowances allocated in any account for special purposes established under subpart XX-5.3.

(b) Each year the REGULATORY AGENCY or its agent will record GHG allowances, as allocated to the unit under Subpart XX-5, in the compliance account for the year after the last year for which GHG allowances were previously allocated to the compliance account. Each year, the REGULATORY AGENCY or its agent will also record GHG allowances, as allocated under Subpart XX-5, in any allocation set-aside for the year after the last year for which GHG allowances were previously allocated to an allocation set-aside.

(c) *Serial numbers for allocated GHG allowances.* When allocating GHG allowances or issuing GHG offsets and recording them in an account, the REGULATORY AGENCY or its agent will assign each GHG allowance a unique identification number that will include digits identifying the year for which the GHG allowance is allocated.

(d) On or before the end of the first year of the first compliance period, the [REGULATORY AGENCY] shall record any ERAs awarded pursuant to XX-5.4 in the GHG budget source's compliance account.

(e) [Language for recordation of any unused ERA or directly allocated allowances.]

XX-6.5 Compliance.

(a) *Allowances available for compliance deduction.* GHG allowances that meet the following criteria are available to be deducted in order for a GHG budget source to comply with the GHG requirements of XX-1.5(c) for a control period.

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

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

(3) GHG allowances with a vintage year one to two years later than the compliance calendar year for the applicable control period may be used to comply with the GHG requirements of XX-1.5(c) consistent with the requirements under Section XX-6.7

(4) For GHG offset allowances, the number of GHG offset allowances that are available to be deducted in order for a GHG budget source to comply with the GHG requirements of XX-1.5(c) for a control period may not exceed 20% of the number of metric tons representing the GHG budget source's compliance obligation for that control period, as determined in accordance with Subparts XX-6 and XX-8, unless the following circumstances occur:

(i) The upper limit price trigger as determined pursuant to XX-9.2(a) is reached, in which case the number of GHG offset allowances available to be deducted for compliance may not exceed [a number >20%]; or

(ii) The lower limit price trigger as determined pursuant to XX-9.2(b) is reached, in which case the number of GHG offset allowances available to be deducted for compliance may not exceed [a number <20%].

(5) The GHG 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 XX-7.2, of GHG allowance transfers submitted for recordation in the GHG budget source's compliance account by the GHG allowance transfer deadline for a control period, the REGULATORY AGENCY or its agent will deduct GHG allowances available under subdivision (a) of this section to cover the source's GHG emissions (as determined in accordance with Subpart XX-8) for the control period, as follows:

(1) Until the amount of GHG allowances deducted equals the number of metric tons of total GHG emissions from the sources in XX-1.4(a), less any GHG emissions attributable to the burning of eligible biomass, determined in accordance with Subpart XX-8, from all GHG budget units at the GHG budget source for the control period; or

(2) If there are insufficient GHG allowances to complete the deductions in paragraph (b)(1) of this section, the source shall exhaust all GHG allowances available under subdivision (a) of this section remaining in the compliance account.

(c) *Identification of available GHG allowances by serial number; default compliance deductions.*

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

(2) The REGULATORY AGENCY or its agent will deduct GHG allowances for a control period from the GHG budget source's compliance account, in the absence of an identification or in the case of a partial identification of available GHG allowances by serial number under paragraph (c)(1) of this section, in the following order:

(i) First, subject to the relevant compliance deduction limitations under XX-6.5(a)(4) and (d)(1), GHG offset allowances. GHG offset allowances shall be deducted in chronological order (i.e., GHG offset allowances from earlier allocation years shall be deducted before GHG offset allowances from later allocation years). In the event that some, but not all, GHG offset allowances from a particular allocation year are to be deducted, GHG offset allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

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

(iii) Third, subject to the relevant compliance deduction limitations under XX-6.7, any borrowed GHG allowances. GHG allowances to be borrowed shall be deducted in chronological order; that is GHG allowances from earlier vintage years shall be deducted before GHG allowances from later vintage years). In the event that some, but not all, GHG allowances from a particular vintage year are to be borrowed and deducted, such GHG allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

(d) *Deductions for excess emissions.*

(1) After making the deductions for compliance under subdivision (b) of this section, the REGULATORY AGENCY or its agent will deduct from the GHG budget source's compliance account a number of GHG allowances, from allocation years that occur after the control period in which the source has excess

emissions, equal to three times the number of the source's excess emissions. In the event that a source has insufficient GHG 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 GHG offset allowances may be deducted to account for the source's excess emissions.

(2) Any GHG allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the GHG budget source or the GHG 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 Jurisdiction law. The following guidelines will be followed in assessing fines, penalties or other obligations.

(i) For purposes of determining the number of days of violation, if a GHG 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 metric ton of excess emissions is a separate violation.

The propriety of the REGULATORY AGENCY's determination that a GHG budget source had excess emissions and the concomitant deduction of GHG allowances from that GHG 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 REGULATORY AGENCY or its agent from initially deducting the GHG allowances resulting from the REGULATORY AGENCY's original determination that the relevant GHG budget source has had excess emissions. Should the REGULATORY AGENCY's determination of the existence or extent of the GHG budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the REGULATORY AGENCY will act as follows.

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

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

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

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

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

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

XX-6.6 Banking.

Each GHG allowance that is held in a compliance account or a general account will remain in such account unless and until the GHG allowance is deducted or transferred under section XX-4.2, section XX-6.5, section XX-6.8, or Subpart XX-7.

XX-6.7 Borrowing.

(a) A covered entity may satisfy up to 20 percent of its compliance obligations under XX-1.5(c) in a specific calendar year by holding GHG allowances with a vintage year 1 or 2 years later than the compliance calendar year for the applicable control period, unless the following circumstances occur:

(1) The upper limit price trigger as determined pursuant to XX-9.2(a) is reached, in which case the number of borrowed allowances available to be deducted for compliance may not exceed [a number >20%], and allowances with a vintage year [>2] years later than the compliance calendar year are available for compliance; or

(2) The lower limit price trigger as determined pursuant to XX-9.2(b) is reached, in which case the number of GHG borrowed allowances available to be deducted for compliance may not exceed [a number <20%], and only allowances with a vintage year 1 year later than the compliance calendar year are available for compliance.

(b) *Borrowing with interest.* A GHG allowance borrowed pursuant to this paragraph shall be a GHG allowance that is established by the REGULATORY AGENCY for a specific future calendar year and that is held by the borrower.

(1) When a covered entity uses borrowed GHG allowances to satisfy its compliance obligation under XX-1.5(c) for a control period, the source must pay interest on the borrowed allowances by submitting a quantity of additional borrowed emission allowances equal to the product by multiplying:

(i) 0.08 raised to the power of the number of calendar years between the calendar year in which the borrowed GHG allowance is used for compliance and the vintage year of the allowance; and

(ii) The metric tons of emissions for which compliance is being demonstrated by holding borrowed emission allowances.

XX-6.8 Account error.

The REGULATORY AGENCY or its agent may, at its sole discretion and on his or her own motion, correct any error in any MATS account. Within 10 business days of making such correction, the REGULATORY AGENCY or its agent will notify the GHG authorized account representative for the account.

XX-6.9 Closing of general accounts.

(a) A GHG authorized account representative of a general account may instruct the REGULATORY AGENCY or its agent to close the account by submitting a statement requesting deletion of the account from the MATS and by correctly submitting for recordation under section XX-7.1 a GHG allowance transfer of all GHG allowances in the account to one or more other MATS accounts.

(b) If a general account shows no activity for a period of six years or more and does not contain any GHG allowances, the REGULATORY AGENCY or its agent may notify the GHG authorized account representative for the account that the account will be closed in the MATS 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the REGULATORY AGENCY or its agent receives a correctly submitted transfer of GHG allowances into the account under section XX-7.1 or a statement submitted by the GHG authorized account representative demonstrating to the satisfaction of the REGULATORY AGENCY or its agent good cause as to why the account should not be closed. The REGULATORY AGENCY or its agent will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

Subpart XX-7 GHG Allowance Transfers

XX-7.1 Submission of GHG allowance transfers.

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

- (a) The numbers identifying both the transferor and transferee accounts;
- (b) A specification by serial number of each GHG allowance to be transferred;
- (c) The printed name and signature of the GHG 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.

XX-7.2 Recordation.

(a) Within 5 business days of receiving a GHG allowance transfer, except as provided in subdivision (b) of this section, the REGULATORY AGENCY or its agent will record a GHG allowance transfer by moving each GHG allowance from the transferor account to the transferee account as specified by the request, provided that:

- (1) The transfer is correctly submitted under section XX-7.1; and
- (2) The transferor account includes each GHG allowance identified by serial number in the transfer.

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

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

XX-7.3 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a allowance transfer under section XX-7.2, the REGULATORY AGENCY or its agent will notify each party to the transfer. Notice will be given to the authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a GHG allowance transfer that fails to meet the requirements of subdivision XX-7.2(a), the REGULATORY AGENCY or its agent will notify the GHG 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 resubmission of a GHG allowance transfer for recordation following notification of non-recordation.

Subpart XX-8 Monitoring and Reporting

The owners and operators, and to the extent applicable, the GHG authorized account representative of a GHG budget unit, shall comply with the monitoring, recordkeeping and reporting requirements as provided in [reference monitoring rule] and all applicable sections of 40 CFR part 75.

Subpart XX-9 Program Monitoring and Review

(a) The JURISDICTIONS shall establish an allowance trading price range with upper and lower price triggers and an upper and lower significant price thresholds in coordination with the participating jurisdictions and the MACCC based on actual market conditions using a case-by-case determination. The JURISDICTIONS shall determine when the price triggers and thresholds are met based on average allowance price over an established time period.

(b) The JURISDICTIONS may decide, upon advice from the MACCC, to implement the following cost containment measures under the following corresponding conditions:

(1) If allowance prices exceed the upper trigger price, expand allowance borrowing and offset limits pursuant to XX-6.5(a)(4) and XX-6.7;

(2) If allowance prices fall below the lower trigger price, reduce allowance borrowing and tighten offset limits pursuant to XX-6.5(a)(4) and XX-6.7.

(3) If allowance prices exceed the upper significant price threshold, release allowances from the allowance reserve pool created in XX-5.3 into the market place until such point that acceptable market conditions are restored.

(4) If allowance prices fall below the lower significant price threshold and risk compromising the long-term incentive and investment objectives of the program, withdraw allowances from the marketplace and place them into the allowance reserve pool created in XX-5.3, until such point that acceptable market conditions are restored.

(c) The REGULATORY AGENCY has the authority to revise cost containment measures.

(d) In coordination with participating states, the REGULATORY AGENCY shall conduct a comprehensive review of this Part after each control period. This review shall include a full assessment and determination whether adjustments need to be made based on environmental results and market performance, as well as the latest scientific findings and technology developments.

(e) In particular, the review process shall:

(1) Evaluate program emissions targets and trajectories, offsets protocols, allowance distribution methodologies, scope of coverage, thresholds for inclusion and/or reporting, point of regulation, and compliance and enforcement provisions;

(2) Assess market prices and trends, including unanticipated price volatility and impacts;

(3) Shall, after consideration of the economic impacts of such linkage, evaluate the potential to link the program to:

(i) Northeast Regional Greenhouse Gas Initiative covering ten northeastern and mid-Atlantic states;

(ii) Western Climate Initiative, covering seven western U.S. states and four Canadian provinces;

(iii) European Emissions Trading System; and

(iv) Other mandatory greenhouse gas reduction programs as appropriate; and

(4) Evaluate whether to accept offsets approved under the international Clean Development Mechanism and Joint Implementation programs, taking into consideration the extent to which those offsets meet the requirements in XX-10.3 and whether such offsets are accepted under the programs listed in subpart (e)(3).

Subpart XX-10 GHG Emissions Offset Projects

XX-10.1 Purpose.

(a) *GHG Offset Program.* The purpose of this subpart is to establish rules for the creation, transfer and use of GHG offset allowances. Entities covered under the cap can use the offset allowances created pursuant to this subpart to meet their compliance obligation.

XX-10.2 Definitions.

(a) *Additional.* Means that the reductions resulting from offset projects must be shown to be “in addition to” reductions that would have occurred without the incentive provided by offset credit. To be eligible for offsets, offset projects cannot be required by law or regulations, and must exceed baseline criteria. The baseline should use standardized criteria (including but not limited to, performance standards, financial feasibility criteria, market penetration, and project start date) that serve to exclude “business as usual” projects from eligibility.

(b) *Conflict of Interest.* A situation that may arise with respect to an individual in relation to any specific project sponsor, GHG emissions offset project or category of offset projects, such that the individual’s other activities or relationships with other persons or organizations render or may render the individual incapable of providing an impartial certification opinion, or otherwise compromise the individual’s objectivity in performing certification functions.

(c) *Cooperating regulatory agency.* A regulatory agency in a jurisdiction that is not a participating jurisdiction that has entered into a memorandum of understanding with the appropriate regulatory agencies of all participating states to carry out certain obligations relative to GHG emissions offset projects in that jurisdiction, including but not limited to the obligation to perform audits of offset project sites, and report violations of this Subpart.

(d) *Enforceable.* Means that offsets must be consistent with regulations and administrative rules that define their creation, provide for transparency, and meet defined standards of ownership to avoid double counting.

(e) *Independent verifier.* An individual that has been approved by the REGULATORY AGENCY or its agent to conduct verification activities.

(f) *Offset project.* An offset project includes all equipment, materials, items, or actions directly related to the reduction of GHG emissions or the sequestration of carbon specified in a consistency application submitted pursuant to section XX-10.4. Equipment, materials, items, or actions unrelated to an offset project reduction of GHG emissions or the sequestration of carbon, but occurring at a location where an offset project occurs, shall not be considered part of an offset project, unless specified at section XX-10.5.

(g) *Permanent.* Means that emission reductions or removals counted as offsets must be backed by guarantees of sufficient duration to assure the integrity of the program if they can be reversed, i.e., re-emitted to the atmosphere. For emission reductions or sequestration activities that can be reversed, adequate safeguards should be established to minimize the risk of reversal, or a mechanism should be provided for the replacement of those metric tons.

(h) *Permanently retired.* A greenhouse gas allowance or credit has been “permanently retired” if it has been placed in a retirement account controlled by the jurisdiction that generated the allowance or credit, or has been placed in an allowance retirement account controlled by the REGULATORY AGENCY, or is otherwise determined by the REGULATORY AGENCY to have been rendered unusable.

(i) *Project commencement.* For an offset project involving physical construction, other work at an offset project site, or installation of equipment or materials, the date of the beginning of such activity. For an offset project that involves the implementation of a management activity or protocol, the date on which such activity is first implemented or such protocol first utilized.

(j) *Project sponsor.* The authorized account representative for the general account of a GHG emissions offset project that is eligible under this subpart.

(k) *Real.* Means that offsets must represent actual emission reductions and not artifacts of incomplete or inaccurate accounting. The effects of a project on GHG emissions must be comprehensively accounted for, and “leakage” in emissions must be factored into the quantification of emission reductions. Conservative assumptions should be used where there are uncertainties in quantifying emission reductions or removals.

(l) *Renewable Portfolio Standard.* A statutory or regulatory requirement that a load-serving entity provide a certain portion of the electricity it supplies to its customers from renewable energy sources, or any other statutory or regulatory requirement that a certain portion of electricity supplied to the electricity grid be generated from renewable energy sources.

(m) *Scientific Committee.* A committee of scientists and experts established by the RAO with an in-depth understanding of climate science and offset program principles and implementation challenges. The Scientific Committee shall provide oversight to and shall accept, reject, or suggest modifications to the Technical Committees.

(n) *Technical Committee:* A committee established by the RAO for each offset category being considered by signatory states and provinces. Technical Committees shall be comprised of subject matter experts and are tasked with drafting offset project protocols. Technical Committees shall report their findings to the Scientific Committee.

(o) *Verifiable.* Means that offsets must result from projects or programs whose performance can be readily monitored and verified, and whose effects can be measured with reasonable precision and certainty

(p) *Verification.* The verification by an independent verifier that certain parts of a GHG emissions offset project consistency application and/or measurement, monitoring or verification report conforms to the requirements of this Subpart

XX-10.3 General requirements.

(a) *GHG emission offset allowance awards.* The REGULATORY AGENCY will provide for the award of GHG offset allowances to sponsors of GHG emissions offset projects that have reduced or avoided atmospheric loading of GHG or sequestered carbon as demonstrated in accordance with the applicable provisions of this Subpart. GHG offset allowances awarded must represent GHG emission reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent. Subject to the relevant compliance deduction limitations of paragraph XX-6.5(a)(4), GHG offset allowances may be used by any GHG budget source for compliance purposes.

(b) *Limits on Use of Offsets.* The use of offsets by any entity covered under the cap and trade program shall be no greater than 20 percent of their compliance obligation for a control period.

(c) *Eligible GHG emissions offset projects.* To qualify for the award of GHG offset allowances, offset projects shall satisfy all the applicable requirements of XX-10.

(1) *Offset project types.* The types of offset projects eligible for the award of GHG offset allowances shall be established by the REGULATORY AGENCY after reviewing the recommendations of the Technical Committee and Scientific Committee of the RAO and shall allow for public comment. The types of offset projects eligible for the award of GHG offset allowances shall be amended and new types added as necessary.

(2) *Offset project locations.*

(i) To qualify for the award of GHG allowances under XX-10, eligible offset projects may be located in any of the following locations:

(A) In [JURISDICTION]; and

(B) The jurisdiction of any cooperating regulatory agency.

(ii) Projects located (in whole or in part) in one or more participating jurisdiction are not eligible for GHG offset allowances under XX-10 unless more of the GHG emissions reduction or carbon sequestration due to the offset project is projected to occur in [JURISDICTION] than in any other participating jurisdiction.

(iii) Offsets from projects outside the United States and Canada shall not be allowed during the initial control period. After the initial control period the use of such international offsets will be determined by the REGULATORY AGENCY based on the recommendation made by the RAO after thorough consideration by the Technical and Scientific Committees and shall allow for public comment.

(iv) Determinations to allow offset credits from other regulatory offset programs shall follow the provisions and process in XX-10.5.

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

(1) Offsets shall not be awarded for reductions in GHG emissions by a GHG budget unit or a unit that is covered by another mandatory GHG reduction program.

(2) GHG offset allowances shall not be awarded to an offset project or GHG emissions credit retirement that is required pursuant to any local, Jurisdiction or federal law, regulation, administrative or judicial order, permit, or legally enforceable agreement. If an offset project receives a consistency determination under section XX-10.4 and is later required by local, Jurisdiction or federal law, regulation, administrative or judicial order, permit, or legally enforceable agreement, then the offset project shall remain eligible for the award of GHG offset allowances until the end of its current allocation period but its eligibility shall not be extended for an additional allocation period.

(3) In developing protocols for specific project types, the REGULATORY AGENCY, after reviewing the recommendations of the Technical Committee and Scientific Committee of the RAO, shall determine whether GHG offset allowances should be awarded to an offset project that includes an electric generation component, and is receiving attribute credits generated from the operation of the offset project that may be used for compliance with a Renewable Portfolio Standard or other regulatory requirement, funds from a System Benefits Charge, or other incentives. This determination should be based on whether the receipt of such funding would violate the principles of additionality.

(4) GHG offset allowances shall not be awarded to an offset project or GHG emissions credit retirement that is awarded offset credits under any other mandatory or voluntary greenhouse gas program.

(e) *Maximum allocation periods for GHG emissions offset projects.*

(1) *Allocation period.* The REGULATORY AGENCY may award GHG offset allowances under section XX-10.7 for an initial 10-year allocation period. At the end of the initial 10-year allocation period, the REGULATORY AGENCY may award GHG offset allowances for a second 10-year allocation period, provided the offset sponsor has submitted a consistency application pursuant to section XX-10.4 prior to the expiration of the initial allocation period, and the REGULATORY AGENCY has issued a consistency determination pursuant to paragraph XX-10.4(e)(2).

(2) *Maximum allocation periods.* The maximum number of allocation periods will be determined pursuant to XX-10.5; additional 10 year periods may be allowed.

XX-10.4 Application process.

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

(b) *Consistency applications.*

(1) The consistency application shall be submitted to the REGULATORY AGENCY in accordance with XX-10.3(c)(2).

(2) The project sponsor must submit the consistency application by June 30 of the first year of the first compliance period for offset projects commenced prior to start of the first compliance period.

(3) The consistency application must be submitted within 6 months after the offset project is commenced for offset projects commenced on or after the start of the first compliance period.

(4) Any consistency application that fails to meet the deadlines of this subdivision will result in the denial of the consistency application and the continued ineligibility of the subject offset project.

(c) *Consistency application contents.*

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

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

(ii) The offset project description as required by the relevant provisions of section XX-10.5.

(iii) A demonstration that the offset project meets all applicable requirements set forth in this Subpart.

(iv) The emissions baseline determination as required by the relevant provisions of section XX-10.5.

(v) An explanation of how the projected reduction or avoidance of atmospheric loading of GHG or the sequestration of carbon is to be quantified, monitored, and verified as required by the relevant provisions of section XX-10.5.

(vi) A completed consistency application agreement that reads as follows: "The undersigned project sponsor recognizes and accepts that the application for, and the receipt of, GHG offset allowances under the GHG Budget Trading Program is predicated on the project sponsor following all the requirements of Subpart XX-10. The undersigned project sponsor holds the legal rights to the offset project, or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of GHG offset allowances under Subpart XX-10 is contingent on meeting the requirements of Subpart XX-10. I authorize the REGULATORY AGENCY or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in this application. I understand that this right to audit shall include the right to enter the physical location of the offset project. I submit to the legal jurisdiction of [PARTICIPATING JURISDICTION]."

(vii) A statement and certification report signed by the offset project sponsor certifying that all offset projects for which the sponsor has received GHG offset allowances under this Subpart (or similar provisions in the rules of other participating states), under the sponsor's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the sponsor) are in compliance with all applicable requirements of the GHG Budget Trading Program in all participating states.

(viii) A verification report and certification statement signed by an independent verifier accredited pursuant to section XX-10.6 that expresses that the independent verifier has reviewed the entire application and evaluated the following in relation to the applicable requirements at sections XX-10.3 and XX-10.5, and any applicable guidance issued by the REGULATORY AGENCY.

(A) The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of sections XX-10.3 and XX-10.5.

(B) The adequacy and validity of information supplied by the project sponsor to demonstrate baseline emissions pursuant to the applicable requirements at section XX-10.5.

(C) The adequacy of the monitoring and verification plan submitted pursuant to the applicable requirements at section XX-10.5.

(D) Such other evaluations and statements as may be required by the REGULATORY AGENCY.

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

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

(2) Consistency applications shall be submitted in a format approved by the REGULATORY AGENCY.

(d) Prohibition against filing consistency applications in more than one participating jurisdiction.

(1) Consistency applications may not be submitted to [REGULATORY AGENCY] if a consistency application has already been submitted for the same project, or any portion of the same project, in another participating jurisdiction, unless the consistency application was rejected by another participating jurisdiction solely because more of the GHG emissions reduction or carbon sequestration due to the offset project is projected to occur in [JURISDICTION] than in any other participating state.

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

(1) *Completeness determination.* Within X days [*to be determined by States, 30 – 60 recommended*] following receipt of the consistency application filed pursuant to subdivision (b) of this section, the REGULATORY AGENCY will notify the project sponsor whether the consistency application is complete. A complete consistency application is one that is in an approved form and is determined by the REGULATORY AGENCY to be complete for the purpose of commencing review of the consistency application. In no event shall a completeness determination prevent the REGULATORY AGENCY from requesting additional information in order to enable the REGULATORY AGENCY to make a consistency determination under paragraph (2) of this subdivision.

(2) *Consistency determination.* Within X days [*to be determined by States, 90 – 180 recommended*] of making the completeness determination under paragraph (1) of this subdivision, the REGULATORY AGENCY will issue a determination as to whether the offset project is consistent with the requirements of sections XX-10.3 and XX-10.4 and the requirements of the applicable offset project standard of section XX-10.5. For any offset project found to lack consistency with these requirements, the REGULATORY AGENCY will inform the project sponsor of the offset project's deficiencies.

XX-10.5 GHG emissions offset project standards.

(a) GHG emissions offset project standards will be based on specific protocols which meet the criteria in XX-10.3 developed by the Technical Committees and approved by the Scientific Committee. GHG emissions project standards shall describe standard approaches, equipment, procedures, and requirements for project development, operation, monitoring, calculation, reporting and verification.

(b) At any time, anyone may propose protocols for new types of projects to the regional organization for consideration.

XX-10.6 Accreditation of independent verifiers.

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

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

- (i) Utilizing engineering principles;
- (ii) Quantifying greenhouse gas emissions;
- (iii) Developing and evaluating air emissions inventories;
- (iv) Auditing and accounting principles;
- (v) Information management systems;
- (vi) Such other qualifications as may be required to provide competent verification services as required for individual offset projects.

(2) Organizational qualifications. Accredited independent verifiers shall demonstrate that they meet the following requirements:

(i) Verifiers shall have no direct or indirect financial relationship, beyond a contract for provision of verification services, with any offset project developer or project sponsor;

(ii) Verifiers shall employ staff with professional licenses, knowledge, and experience appropriate to the specific category(ies) of offset projects they seek to verify;

(iii) Verifiers shall hold a minimum of one million U.S. dollars of professional liability insurance. If the insurance is in the name of a related entity, the verifier shall disclose the financial relationship between the verifier and the related entity, and provide documentation supporting the description of the relationship; and

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

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

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

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

(2) Documentation that the applicant has at least two years of experience in each of the knowledge areas specified at subparagraphs (a)(1)(i) through (v) of this section, and as may be required pursuant to subparagraph (a)(1)(vii) of this section;

(3) Documentation that the applicant has successfully completed the requirements at paragraph (a)(3) of this section, as applicable;

(4) A sample of at least one work product that provides supporting evidence that the applicant meets the requirements at paragraphs (a)(1) and (2) of this section. The work product shall have been produced, in whole or part, by the applicant and shall consist of a final report or other material provided to a client under contract in previous work. For a work product that was jointly produced by the applicant and another entity, the role of the applicant in the work product shall be clearly explained;

(5) Documentation that the applicant holds professional liability insurance as required pursuant to subparagraph (a)(2)(iii) of this section; and

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

(c) Upon approval of an application for accreditation by the REGULATORY AGENCY, the independent verifier shall be accredited for a period of three years from the date of application approval.

(d) Reciprocity. Independent verifiers accredited in other participating jurisdictions may be deemed to be accredited at the discretion of the REGULATORY AGENCY.

(e) Conduct of accredited verifiers.

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

(2) Accredited verifiers shall have an ongoing obligation to disclose to the REGULATORY AGENCY any facts or circumstances that may give rise to a conflict of interest with respect to an offset project, offset project developer, or project sponsor.

(3) The REGULATORY AGENCY may reject a verification report and certification statement from an accredited verifier, submitted as part of a consistency application if the REGULATORY AGENCY determines that the accredited verifier has a conflict of interest related to the offset project, offset project developer, or project sponsor.

(4) The REGULATORY AGENCY may revoke the accreditation of a verifier at any time given cause, for the following:

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

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

(iii) Negligence or neglect of responsibilities pursuant to the requirements of this Subpart; and

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

XX-10.7 Award and Recordation of GHG offset allowances.

(a) *Quantities of GHG offset allowances awarded, and subsequently recorded.*

(1) Award of *GHG* offset allowances.

(i) *GHG emissions offset projects.* Following the issuance of a consistency determination under paragraph XX-10.4(e)(2) and the approval of a monitoring and verification report under the provisions of subdivision (e) of this section, the REGULATORY AGENCY will award one GHG offset allowance for each CO₂ equivalent metric ton of demonstrated reduction in GHG emissions or sequestration of CO₂.

(ii) *GHG emissions credit retirement.* If a project sponsor received a consistency determination pursuant to paragraph XX-10.4(e)(2), one GHG offset allowance will be awarded for each CO₂ equivalent metric ton of reduction of GHG or sequestration of CO₂, represented by the relevant credits or allowances retired.

(2) *Recordation of GHG offset allowances.* After GHG offset allowances are awarded under XX-10.7(a)(1), the [REGULATORY AGENCY] shall record such GHG offset allowances in the project sponsor's general account.

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

(1) For GHG emissions offset projects undertaken prior to the start of the first compliance period, the project sponsor must submit the monitoring and verification report covering the period prior to the start of the first compliance period by June 30 of the first year of the first compliance period.

(2) For GHG emissions offset projects undertaken on or after the start of the first compliance period:

(i) Ongoing monitoring and verification reports must be submitted once annually, by June 30 of each calendar year following the completion of each calendar year during which the offset project achieved GHG reductions or sequestration of CO₂ for which the project sponsor seeks the award of GHG offset allowances.

(ii) The final monitoring and verification report must be submitted within 6 months following the completion of the last calendar year during which the offset project achieved GHG reductions or sequestration of CO₂ for which the project sponsor seeks the award of GHG offset allowances.

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

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

(2) The GHG emissions reduction or GHG sequestration determination as required by the relevant provisions of section XX-10.5, including a demonstration that the project sponsor complied with the required quantification, monitoring, and verification procedures under section XX-10.5, as well as those outlined in the consistency application approved pursuant to paragraph XX-10.4(e)(2).

(3) A signed statement that reads "The undersigned project sponsor hereby confirms and attests that the offset project upon which this monitoring and verification report is based is in full compliance with all of the requirements of Subpart XX-10. The project sponsor holds the legal rights to the offset project, or has been granted the right to act on behalf of a party that holds the legal rights to the offset project. I understand that eligibility for the award of GHG offset allowances under Subpart XX-10 is contingent on meeting the requirements of Subpart XX-10. I authorize the REGULATORY AGENCY or its agent to audit this offset project for purposes of verifying that the offset project, including the monitoring and verification plan, has been implemented as described in the consistency application that was the subject of a consistency determination by the REGULATORY AGENCY. I understand that this right to audit shall include the right to enter the physical location of the offset project and to make available to the REGULATORY AGENCY or its agent any and all documentation relating to the offset project at the REGULATORY AGENCY's request. I submit to the legal jurisdiction of [PARTICIPATING JURISDICTION]."

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

(5) A verification report and certification statement signed by an independent verifier accredited pursuant to section XX-10.6 that documents that the independent verifier has reviewed the monitoring and verification report and evaluated the following in relation to the applicable requirements at section XX-10.5, and any applicable guidance issued by the REGULATORY AGENCY.

(i) The adequacy and validity of information supplied by the project sponsor to determine GHG emissions reductions or GHG sequestration pursuant to the applicable requirements at section XX-10.5.

(ii) The adequacy and consistency of methods used to quantify, monitor, and verify GHG emissions reductions and GHG sequestration in accordance with the applicable requirements at section XX-10.5 and as outlined in the consistency application approved pursuant to paragraph XX-10.4(e)(2).

(iii) Such other evaluations and verification reviews as may be required by the REGULATORY AGENCY. The adequacy and validity of information supplied by the project sponsor to demonstrate that the offset project meets the applicable eligibility requirements of section XX-10.5.

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

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

(d) Prohibition against filing monitoring and verification reports in more than one participating jurisdiction. Monitoring and verification reports may only be filed under XX-10.7 for projects that have received consistency determinations under XX-10.4(e)(2). Monitoring and verification reports may not be filed under XX-10.7 for projects that have received consistency determinations in other participating states.

(e) *REGULATORY AGENCY action on monitoring and verification reports.* The REGULATORY AGENCY will approve or deny a complete monitoring and verification report, in a format approved by the REGULATORY AGENCY, filed with the REGULATORY AGENCY pursuant to XX-10.7(d), within X days [*to be determined by States, 45 recommended*] following receipt of a complete report. A complete monitoring and verification report is one that is in an approved form and is determined by the REGULATORY AGENCY to be complete for the purpose of commencing review of the monitoring and verification report. In no event shall a completeness determination prevent the REGULATORY AGENCY from requesting additional information in order to enable the REGULATORY AGENCY to approve or deny a monitoring and verification report submitted in a format approved by the REGULATORY AGENCY, and filed under XX-10.7.