DRAFT PROCEDURE FOR ADDRESSING SIGNIFICANT DEFICIENCIES IN PAST VALIDATION, VERIFICATION OR CERTIFICATION REPORT

A. Definitions

1. A deficiency, with regard to validation, verification, or certification reports means:
   (a) Conducting the validation or verification activities in a manner that does not comply with the requirements of the “CDM accreditation standards for operational entities” applicable at the time of the validation or verification activities;
   (b) Insufficiently validating or verifying a fact or set of facts;
   (c) Incorrectly applying a CDM rule or requirement in effect at the time of the submission of the request for registration or issuance of CERs;
   (d) Validating or verifying a fact or set of facts based on information that is incomplete, inconsistent with or contrary to the validated or verified facts;
   (e) Providing incorrect factual information to the Board.

2. A significant deficiency is a deficiency that, when corrected, would lead to a different or contrary validation or verification opinion than originally issued in relation to one or more of the following:
   (a) Local stakeholder consultations;
   (b) Host Party approval;
   (c) Environmental impact assessment;
   (d) Additionality of the project activity;
   (e) Applicability/application of the approved baseline and monitoring methodology; and
   (f) Calculation of GHG emission reductions or removal enhancements achieved by or resulting from the registered CDM project activity or programme of activities (PoAs).

B. Principles of liability for excess issuance of certified emission reductions

3. Where the Board determines that the review of significant deficiencies in previous validation, verification or certification reports demonstrates that the significant deficiencies were as a result of a lack of guidance or clarity on the application of a CDM requirement applicable at the time of the validation, verification, or certification activities, no liability for the consequential excess issuance of CERs shall be imposed on any party.

4. Where the Board determines that the review of significant deficiencies in previous validation, verification or certification reports demonstrates that the significant deficiencies were as a result of the DOE failing to correctly apply a clear and known CDM requirement applicable at the time of the validation, verification, or certification activities, the DOE shall be liable for all the consequential excess issuance of CERs.
5. Where the Board determines that the review of significant deficiencies in previous validation, verification or certification reports demonstrates that the significant deficiencies were as a result of actions of the project participants which could not be reasonably detected by the DOE conducting the validation, verification, or certification activities, the Board may require that future issuances of CERs for the relevant project activities be adjusted downwards to account for all the consequential excess issuance of CERs.

6. The quantity of excess CERs shall be limited to the number of CERs issued as a during the last 5 years prior to the date of the Board’s decision to initiate a review less the number of CERs that the review of significant deficiencies determines should have been issued over the same time period, except in cases of fraud.

C. Initiation of review

1. Identification of possible significant deficiencies

7. The possible existence of significant deficiencies in previous validation, verification or certification reports may be identified by:

   (a) The [Board and the] secretariat during the assessment or review of a request for registration of a proposed CDM project activity or PoA, or a request for issuance of CERs carried out in accordance with the “Clean development mechanism project cycle procedure”;

   (b) A CDM assessment team during the conduct of an assessment of a DOE in accordance with the “Procedure for accrediting operational entities by the Executive Board of the clean development mechanism”;

   (c) Another DOE carrying out later verification and certification activity for the same project activity or PoA for which the validation or previous verification or certification activity is in question;

   (d) Other stakeholders in the CDM; or

   (e) The DOE itself that carried out the validation, verification or certification activity in question;

8. The identification of possible existence of significant deficiencies identified via paragraph 7 (c)-(e) above shall be submitted to the secretariat through a dedicated interface on the UNFCCC CDM website, using the [name of the form] with supporting documentary evidence. The submissions shall be on a confidential basis.

2. Analysis and recommendation on review

9. Where the possible existence of significant deficiencies in previous validation, verification or certification reports is identified in accordance with paragraph 7 above, the secretariat shall analyze the claim based on the information held by the secretariat (including information supplied by third-parties) and, if found justified, shall submit to the Board an analysis detailing the basic facts and propose a recommendation of whether a review of significant deficiencies in previous validation, verification and/or certification reports is required.

10. At the next available meeting, the Board shall decide whether to proceed with a review of significant deficiencies in previous validation, verification and/or certification reports and shall [establish a review team] [direct the secretariat] to undertake an investigation
and corrections of significant deficiencies through the preparation of an assessment report in accordance with paragraph 23 below.

D. Investigation and correction of significant deficiencies

1. Preliminary investigation

11. The [review team] [secretariat] shall conduct a preliminary investigation based on the nature of the possible significant deficiencies identified and the information held by the secretariat to establish the content of the review of significant deficiencies including:

   (a) A summary of the facts identified that indicate that significant deficiencies exist in previous validation, verification and/or certification reports; and

   (b) The registered project activities and validation, verification and certification reports to be covered by the review and the DOE that was responsible for the preparation of the relevant reports.

12. In the cases referred to in paragraph 7 (e) above, the content of the review shall be limited to the registered project activity(ies) or PoAs and validation, verification and/or certification reports identified by the DOE.

13. The [review team] [secretariat] shall submit the content of review to the Board for approval. If no member of the Board objects to the content of review within [20] days, the content of review shall be deemed accepted by the Board.

14. If a member of the Board wishes to object to the content of review, he/she shall notify so to the Chair of the Board through the secretariat, giving reasons in writing. The secretariat shall acknowledge the receipt of the objection and make it available to the Board.

15. If a member of the Board objects to the content of review more than two (2) weeks prior to the next Board meeting, the matter shall be placed on the agenda of the next Board meeting; otherwise it shall be placed on the agenda of the subsequent Board meeting.

16. At the Board meeting where the matter is placed on the agenda, the Board shall decide the content of review.

2. Review of significant deficiencies

17. Following the Board’s approval of the content of review of significant deficiencies in previous validation, verification or certification reports, the secretariat shall:

   (a) Notify the project participants and the DOE(s) that was(were) responsible for the preparation of the relevant validation, verification and certification reports that shall be included in the review.

   (b) Make publicly available the content of review on the UNFCCC CDM website;

   (c) Suspend receiving requests for issuance for the project activities, including programmes of activities, included in the review.

18. The DOE shall provide responses to the issues identified in the content of review no later than [28] days after the date of the notification of the request for review of significant deficiencies. For each issue (or sub-issue) raised in the content of review, the DOE shall either:
(a) Provide a written response that admits the existence of significant deficiencies together with the following remedial actions:

(i) Provision of an explanation as to how the significant deficiencies occurred and what actions the DOE has taken to ensure that they will not recur;

(ii) Submission of corrected validation, verification and/or certification reports in question as well as any relevant monitoring reports and attached spreadsheets that it deems necessary;

(iii) (If any) a quantification of any excess issuance of CERs that may have occurred as a result of the significant deficiencies in the relevant validation, verification and certification reports and an indication that they are prepared to transfer an equivalent amount of credits to a cancellation account in the CDM registry.

(b) Provide a written response that refutes the existence of significant deficiencies and justifies why no corrections to the validation, verification and certification report(s) are necessary.

19. Within [14] days of the receipt of the DOE’s response, the [review team] [secretariat] shall prepare an assessment report on the identified possible significant deficiencies in the context of the content of review, the CDM requirements applicable to the project activities that were available as the time the validation, verification and certification reports were submitted and taking into account the responses of the DOE.

20. If the [review team] [secretariat], during the assessment, requires further clarification from a party involved in the validation or verification activity, it shall ask the entity to submit a response addressing the required clarification. The party shall submit the clarification within [14] days to the [review team] [secretariat] after receiving this request. In this case, the [review team] [secretariat] shall, notwithstanding the provision in paragraph 19 above, finalize the assessment report within [14] days of the receipt of the requested clarification.

21. If the [review team] [secretariat], during the assessment, identifies that the proposed request requires input from a relevant panel or working group, it shall place the matter on the agenda of the next meeting of the panel or working group. In this case, the [review team] [secretariat] shall, notwithstanding the provision in paragraphs 19 and 20 above, finalize the assessment report within [14] days of the receipt of the input from the DOE.

22. If, [during the assessment][at any time], the [review team][secretariat] forms the opinion that an extension to the timelines is required for the assessment, or receives a request from a DOE for an extension of the timelines for a response, it shall request a specified extension to the timeline to the Chair of the Board, explaining the reasons for the extension. The Chair of the Board shall grant the extension unless the Chair is of the opinion that the reasons are unjustified.

23. The assessment report shall include a proposed decision from the options referred to in paragraph 26 below and the reasons and rationale for the proposed decision, including, but not limited to:

(a) The facts and any interpretation of the facts that formed the basis of the proposed decision, including a determination of the reasons [and the entity(ies) responsible] for the occurrence of the significant deficiencies in previous validation, verification and certification reports;
(b) The CDM requirements and any interpretation of them applied to the facts;

(c) [Identified responsible entity(ies) for the occurrence of the significant deficiencies. [If another DOE is found responsible (e.g. due to its validation report), then the recommendation for initiation of review for this DOE];

(d) A summary of the corrections required in the validation, verification and certification reports in question as well and any relevant monitoring reports and attached spreadsheets; and

(e) (If any) a quantification of any excess issuance of CERs that may have occurred as a result of the significant deficiencies in the relevant validation, verification and certification reports.

3. Consideration of assessment of significant deficiencies

24. The secretariat shall forward the assessment report to the DOE for comments. The DOE shall be given an opportunity for a hearing at a Board meeting before any decision is made by the Board.

25. If the assessment report contains a proposed decision that identifies the project participants as being responsible for the occurrence of significant deficiencies, the secretariat shall forward the assessment report to the project participants for comments. The project participants shall be given an opportunity for a hearing at a Board meeting before any decision is made by the Board.

26. At the Board meeting for which the matter is placed on the agenda, the Board shall decide whether to:

(a) Accept the DOE’s assertion that significant deficiencies do not exist and that no corrections to the validation, verification and certification reports are necessary; or

(b) Accept the [review team] [secretariat]’s proposed decision; or

(c) Request the [review team] [secretariat] to continue its assessment and provide guidance for the assessment.

E. Consequences for the investigation and review of significant deficiencies

27. In accordance with the decision made under paragraph 26 above, the Board shall:

(a) Direct the DOE responsible for the occurrence of significant deficiencies to make all necessary corrections to the validation, verification or certification report(s) as outlined in the decision;

(b) Require the DOE responsible for the occurrence of significant deficiencies to transfer an equivalent amount of ERUs, CERs, AAUs and/or RMUs equal to the excess CERs issued into the cancellation account in the CDM registry within a timeframe decided by the Board;

(c) Direct the secretariat to resume the receipt of requests for issuance for the project activities for which significant deficiencies were eventually not determined or for which corrections to the validation, verification or certification reports have been made in accordance with paragraph (a) above to meet CDM requirements;
(d) Initiate a review of significant deficiencies in previous validation, verification or certification reports prepared by another DOE if that DOE was found responsible for the occurrence of significant deficiencies as a result of this review;

(e) Withdraw accreditation of the DOE if its fraud caused the occurrence of the significant deficiencies;

(f) In the case of fraud by the project participants of the project activities or PoAs being found to by the cause of the significant deficiencies, the project participants shall be notified that no future issuances of CERs for the project activities or PoAs shall be allowed;

(g) [Option 1: Request the project participant(s) to transfer an equivalent amount of ERUs, CERs, AAUs and/or RMUs equal to the excess CERs issued into the cancellation account in the CDM registry within a timeframe decided by the Board and notify the project participant(s) unless such a transfer is made an equivalent number of CERS from a future issuance of CERs for the CDM project activity will be forwarded to a cancellation account by the CDM registry administrator] [Option 2: Notify the project participant(s) of the number of CERs that shall be deducted from future requests for issuance for the specified project activity, including programme of activities.]

28. If a DOE fails to comply with the directions under paragraphs 28 (a) and (b) above or fails to respond to a scope of review within 90 days, the DOE’s accreditation shall be suspended until such time when it complies.

29. Costs relating to the review referred to in section D above shall be borne by the party found to be responsible for the occurrence of the significant deficiencies.

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